

2. a. Gordon
1737.

SPECULATIONS

UPON

LAW and LAWYERS;

APPLICABLE TO

The Manifest Hardships, Uncertainty,
and Abusive Practice

OF THE

COMMON LAW.

MISERA SERVITUS EST, UBI JUS EST VAGUM, AUT
INCOGNITUM.

Coke in Proem. ad Inst. III.

OYEZ! — OYEZ! — OYEZ!

English Law-Court Proclamation,

L O N D O N:

Printed for Messrs. Robson and Clarke, *New Bond-Street*;
Debrett, *Piccadilly*; Beckett and Edwards, *Pall Mall*;
Egerton, *Charing Cross*; Murray and Wheildon, *Fleet-
Street*; Robinson, *Pater-noster-Row*; and Richardson, at
the *Royal Exchange*.

1788.

[Price Two SHILLINGS.]

23 Robson
101



1609/2756

ENTERED IN THE HALL-BOOK
OF THE
COMPANY OF STATIONERS,

ACCORDING TO

An Act of Parliament,

31. March, 1788.

TO THE CONSIDERATION OF THE
“*Plurimæ Leges, corruptissima Respublica.*”

TACITUS.

Englified by an Attorney.

THE MORE MISCHIEF, THE BETTER SPORT.

TO THE CONSIDERATION OF THE
“*Nulli vendemus, nulli negabimus, aut differemus
Justitiam vel Rectum.*”

MAGNÆ CHARTÆ Cap. 29.

Englified by another Attorney—with the Suffrage
of all the Courts at *Westminster*.

WE SHALL SELL TO EVERY MAN, WITHOUT EX-
CEPTION; WE SHALL DENY, OR DEFER, TO EVERY
MAN, JUSTICE OR RIGHT, — UNLESS HE CAN PAY
SWINGINGLY FOR IT.

“SOIT DROIT FAIT COME EST DESIRE.”

“Let Right be done as is desired.”

Royal Assent given by K. CHA. I. to the
PETITION OF RIGHT, an. 1628.

TO THE CONSIDERATION OF THE
HIGH COURT OF PARLIAMENT;
THE WISDOM, GLORY, AND SUPREME JUDICATURE

OF THE BRITISH NATION!

THE FOLLOWING SPECULATIONS

ARE MOST HUMBLY SUBMITTED

BY THE AUTHOR,

AN ENGLISHMAN.

Omnes Leges in Regno illo usitatæ, cū in aliquo *claudica-*
verint, in omni PARLIAMENTO poterint reformari.

FORTESCUE *de Laud. Leg. Angl.* cap. 53.



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S P E C U L A T I O N S

INTRODUCTION.

APOLOGY FOR THIS UNDERTAKING.

IT is not my design to amuse the Reader with trifling words, nor to lay before him considerations merely specious; I therefore entreat his serious attention to some points of the most serious nature—tending to the honour and wellbeing of the State; and the Freedom, Property, Peace, and Personal Security of every individual.

Far less is it my intention to raise a clamour against the LAW.—No man reverences the laws of his country more than myself: insomuch that, in my judgment, should a particular law be oppressive, as in some instances it may, we ought, nevertheless, as peaceable subjects, to submit till we can obtain a better, because it *is* the law.

Particular cases seldom lay hold on the general.

B

Every

Every man has a particular case; but what has the public to do with it? For, according to a late celebrated writer *, “There is “nothing we can bear so easily as the mis- “fortunes of our neighbours.”

My particular case, in private judgment, may be deemed hard:—but my lot, for the present, is cast.

The scene of suffering, of every kind, should be acted with suitable acquiescence and becoming fortitude;—and, where the law imposes or permits, all adverse parties stand acquitted; and the reproach, if any, falls upon that law which cruelly imposes, or negligently permits.

It is an avowed maxim of one of our first-rate political writers †, that “The errors and “sufferings of the people are from their “governors.”

And the same excellent law-modeller shrewdly remarks, “The people cannot *see*, “but they can *feel*.”

* Swift.

† Harrington.

See his First and Fifth Political Aphorisms.



My

My particular peace can be of no importance to the public ; but the public peace is of the highest concern to me.

And when abuses are general, and allowed (no matter how long they have been warranted by pernicious custom, provided they are abuses) they become matter of general concern, and merit general inquiry ; and every honest, independent, freeborn subject will step forward, and lend a helping hand towards correcting their enormity.

Reformation of church-abuses, as it is well known, required only a beginning :—but when once begun, how sudden, how unexpected, how rapid its progress ! — *Principium dimidium totius*—the beginning is half the work : and who knows, without the gift of prophecy, but that we are upon the eve of a reformation of several abuses in the practice part of the common law ?

“ 'Tis a consummation
“ Devoutly to be wish'd ” *

by every wellwisher to his country !

When we can no longer, with our best efforts, be of any use to ourselves, it may still remain in our power to be, in some degree, serviceable to others—and, if to benefit the

* Shakespeare.

community at large, the greater the enterprise—the more glorious the end !

Such is the design of the following speculations :—and should they chance to furnish useful hints to able heads, men of virtue and of power ; the end of the Writer will be amply recompensed.

While some are endeavouring, *without means*, to pay off the national debt ; and others, to add to the immense load of taxes, such as no country ever experienced before, *without burdening the subject*—be it my honest purpose, briefly, to point out a sorer evil to the state, than all the national debt and taxes put together :—as LIBERTY and the uncorrupt administration of wise and unequivocal laws, are of more consequence to a free people in the general, than fluctuating and precarious property, which, at best, can only be the portion of a few. Be it my humble endeavour, upon more rational principles, to purge the *Augean* Stable of the Law—for to cleanse it altogether were an *Herculean* task indeed !

Suffice it then to un rivet, or, at least, to slacken some of its grievous fetters ; by pointing out many of its glaring abuses, its preposterous proceedings, its oppressive measures, its scandalous fictions, its enormous exactions,
and

INTRODUCTION.

and increasing evils to the subject and to the state, arising from infamous practice in some of its departments.

These are the principal grounds — and I would fain flatter myself that, in an age of general inquiry, like the present; when we have shook off, and are still daily shaking off the prejudices of our forefathers, as well in politics as in religion; and endeavouring to see things as they are—that every attempt to promote the peace of individuals, will be considered as promoting public peace, and, as such, will have the suffrage of the public.

In a general charge, brought against so respectable and learned a body as the Law, it grieves me that I am constrained to include, indiscriminately, all its ministers—many of whom I have the honour to know, and shall ever esteem for their virtue, wisdom, and ingenuity. But in a general charge, all partiality must be dispensed with: the error, according to my conception, is in the administration of the law, arising from evident corruption; and rests not upon such able and upright lawyers:—for so ready are we to follow and to sustain bad practice, being bred up in bad practice, that the abuses are become of custom, not of choice; and lie in the measures, not in the men. In short, the miller, on all hands, stands acquitted; for the fault

is evidently in the mill. And even to such uncorrupt ministers, I beg leave to appeal for the truth of every assertion I shall advance against the present abusive practice.

It is now about sixteen years since a great part of these reflections first issued from the press*; during which interval I have never met with any material objections offered against them. They are now reprinted, with considerable additions, and some alterations; and it is at the particular request of some few sensible friends, who consider them of public utility, that they are now published.

If a single sentence is advanced that is not just, it shall be altered, apologized for, or expunged in any subsequent edition:—if a syllable is offered to matter of fact, that cannot be supported by fact, it shall not abuse your patience in future.

All I have presumed to allege, may be justly accounted saucy presumption, if not founded on the rock of Truth.

Let TRUTH then be the Basis, and let CANDOUR be the Judge.

* The first Sketch was printed in a Miscellany of Reflections, entitled JOINERIANA; or the BOOK OF SCRAPS, An. 1772.

SPECU-

SPECULATIONS

UPON

Law and Lawyers.

SECTION I.

Necessity of a Revision and Abridgment of the Law.

LAWS in general—doubtless from the misinterpretations to which they are liable, and the mischiefs they thereby occasion; from the hardships they countenance, and the tyranny they have supported in almost every age and country—but, chiefly, from the reproach that mercenary lawyers have brought upon them, are aptly defined, by a learned and noble author*, in the reigns of *Elizabeth* and *James*,

“ The Sophistries of every common-weal.”

To remove, in some measure, that odium from the laws of England, by pointing out several glaring

* Sir Fulke Grevill, Lord Brook, — See his *Mustrapha*, in Chorus, Act 1.

ing errors, oversights, and manifest abuses in practice to which they are obnoxious, and that affront and deform the majesty of the common law, is the purport of the following desultory speculations:—and, as I am addressing Englishmen, I shall endeavour to speak plain English.

Nothing is so much wanted as a revival and abridgment of the law: next to which,

Nothing is more to be desired than a reformation in the practice, and among the practitioners in the several departments thereof.

Wordy and uncertain laws, subject to the cavils and misinterpretations of mercenary expositors, are, certainly, the worst shackles a free people can wear.

“How long are we to be the slaves of verbose and equivocal laws; and the dupes of mercenary, unfeeling, and sharking lawyers?” is the cry in every street!

One would be apt to conclude that many of our laws were constituted in behalf of lawyers, rather than for the benefit of the injured, and the peace and security of the people at large.

A nation of free men ought to be governed by a code of salutary and wise laws, and not by a nation of wrangling lawyers.

The best laws and most approved forms of government were framed by wise men and lawgivers: *Moses, Minos, Lycurgus, Numa, Solon, Plato, Aristotle, Alfred, Sir Thomas More, Machiavel, Bodin,*

din, Harrington, Locke, &c. &c. not by professional lawyers; who make a gainful traffic of litigation, and have always an interest in setting people together by the ears.

Besides those revered names, perhaps, it will be found, upon a thorough scrutiny on the grand question of legislation, that society is far more indebted to a few wise princes and disinterested philosophers, than to whole tribes of lawyers by profession.

It affords small consolation to a free people, to be assured the principles of their laws are good, and their fundamentals just; as long as the practice is notoriously pernicious, and destructive of their property and peace,

Neither is it sufficient to have a number of good laws; provided they are negligently, erroneously, and scandalously executed.

Wherever a law is defective to the end proposed, another should be immediately framed.

The antiquity or prevalency of a law, is no reason why it should any longer subsist, if, in some cases, inadequate and disproportioned; in others, immeasurably hard.

“ So says the law; and so must we determine
 “ —We confess it is very hard, more especially
 “ in the case before us—but there is no remedy
 “ at present—Some of these days, legislature may
 “ take it into consideration; and amend the old,
 “ or enact a new.”

Here's

Here's reason against law, which is *reason*, by the very judges of the law.

Such conclusions, which frequently occur in practice, against the very face of the law, is reason sufficient why no further process should be tried upon such defective reason, till a revival has been made — Abrogate it at once, and revise it afterwards.

The law is calculated not only for general, but private and particular good : every man, subject or alien, is to be benefited by the law of the land he inhabits ; but no individual injured.

Neither do I see any reason, why a wholesome law, become in a manner obsolete through disuse, should remain a *dead letter* : the men who framed it might possibly be as wise as many in our day ; and, a hundred to one, they were full as disinterested.

The laws are palpably and egregiously defective, where justice cannot be had, nor even a hearing obtained, but upon the most dilatory, expensive, and even bloodsucking terms.

They are also pernicious in the highest degree, when frivolous evasions, vexatious chicanery, and lying, detestable sham-pleas are admissible ; by countenancing and spreading guilt, which should be discouraged at all events, and even punished ; rendering a court of justice, a den of falsehood.

“ What, won't you allow the man to put in a plea ? ” says Serjeant MOOT — “ To debar him
“ his

"his plea would be very hard indeed!—when, if
 "he has none ready, 'tis our *trade* to devise and
 "invent for him."

That client of yours, Mr. Serjeant, promises to have but a sorry **APPEAL TO JUSTICE**, who despises **TRUTH**—

Besides, learned Sir! (a word in your ear) **LAW**, in no free constitution, should be suffered to become a *trade*; for every kind of trade, as you gentlemen well know, is obnoxious to deceit and abuse; to fraud and imposition.

Having so many Methodist-preachers among us, who teach and exhort for **God's sake**; 'tis strange, that out of such an infinity of Barristers, we have not a few Methodist-pleaders.

There must be a right and a wrong side in every action.

In spite of reason, justice, and the best opinions previously had; no man, not the ablest lawyer among them, can take upon him to determine what will be the event of an action or suit.

We ought, at least, to know what is law, what is not law, when we submit our case to eminent men of the profession, whom we fee for their opinion. Still we never know, but to our further cost.

The shameful quirks admissible at common law are so many, and so various, that the fair and just solicitor is ever liable to be over-reached by the

the unfair and knavish practitioner:—inasmuch that, in many cases, it is even advisable to prefer the shirking pettifogger, to the most honourable man of the profession.

For it is impossible the candid counsel, on one side, should be always able to foresee what the wretched barrator, on the other, may set up to defeat his honest client.

The wrangling among lawyers, frequently puts one in mind of children playing at cross-purposes.

They evidently debate for fees only—not for the love of justice, the cause of truth, and the honour of their calling.

Tautology, and the multiplication of words, are the trammels of clients, and the nets and gins of lawyers.

And whence comes it, but from the multiplication of useless books?—tending, if possible, still more and more to thicken and obscure what was incomprehensibly dark before.

SECTION II.

Astonishing Increase of printed Law-Books from the Beginning of the last Century.

IN the beginning of the last century (no longer ago) Dr. Gwin the civilian, told Judge Finch, ironically, “That all the common law-books of
“ the

“ the realm might be carried in a wheelbarrow.”
— He might have added, together with the Statutes: and it may be, he meant to include them.

The civilian spoke it in ridicule — but, in my humble opinion, he could not have paid a greater compliment to the law of a free people.

And true it is, that, at that period, we had but a moderate load of printed law, even for a wheelbarrow—for, except *Bracton*, *Fleta*, the *Register of Writs*, the *Year-Books*, *Statham's*, *Fitzherbert's*, and *Brooke's Abridgments*, the old *Natura Brevium*, *Staunford*, *Old Entries*, *Rastell's Entries*, *West's Symboleographie*, *Plowden*, and the *Statutes*, I know of none of any bulk.—For the rest, of highest importance to the subject, as *Glanvil*, *Britton*, *Horne*, *Hengham*, *Fortescue*, *Littleton*, *Fitzherbert's Natura Brevium*, *Nova Narrationes*, *St. German*, *Perkins*, *Kitchen*, *Lambarde's Pieces*, *Finch*, with some few more; an eager student might carry them all under his arm, without much inconveniency.

But about the same period, to wit, the beginning of the last century, our great common law-modeller, *Sir Edward Coke*, set to work; since when there has been no want of law. So that could our satirical civilian look forward to the present time, he would be soon convinced that a broad-wheeled waggon would scarce contain all the common and statute law, together with the Chancery proceedings (all *spick and span* since his day)

day) parliamentary cases, journals, &c. &c. and six dray-horses sweat to draw them!

He would find, among an infinity of other, reports of cases, during one presidency, almost to equal in size the YEAR-BOOKS; that is, from Edward II. to Henry VIII. inclusive! And more Statutes, in *bulk*, either in the last reign, or that of his present Majesty, than from *Magna Charta* to the *Revolution*; that is, during the space of FOUR HUNDRED and SIXTY-SIX years!

Abridgments without end! But one single Abridgment would present itself, enough to break a porter's back!—A digest of the once plain and simple common law of *England*, no less formidable than the Roman Digests or Pandects, Code, Authentics, and Feuds put together!—A Repertorium of the common law, and an Index to the Statutes, either of which far exceeds in bulk the codes of all the northern nations of *Europe*!

Formularies of law, which sufficiently evince that the law itself is swallowed up in form:—that the very essence is form and ostentation:—an *ignis fatuus*, a vapour, a chimera—a type of something not generally understood!

Endless Forms of Precedents, and gigantic Bodies of Conveyancing, forty times more, in *words*, than our virtuous ancestors would have thought sufficient to transfer in fee, entire, and in parcels, all the provinces, principalities, kingdoms, and empires of the known world!—And yet he must be but a poor proficient in his craft, who could not pick a hole, or find a flaw in the
best

best assured title, should it chance to be called in question*.

Volumes of oaths, enough to sink a nation! — moots and quibbles, to testify the ingenuity of some men in the art of confounding all right and wrong! highly encouraging to the fraudulent and litigious; but more abominable and alarming to the virtuous and peaceable than all the penal laws put together!

Add to these, the Laws of Costs, and Tables of Fees, reduced to just volumes; highly necessary to be weighed and considered by every one who has any thing to hope or to fear; or any property to recover or to lose.

Further to insist, would be only to epitomize the labours of the late ingenious Mr. *John Worral*; to whose *Bibliotheca*, consisting of about two thousand choice articles, I beg leave to refer the curious reader for a comprehensive view of the encreasing book-law of the land.

And yet I cannot omit observing, that the Attorney's and Solicitor's Practice, in either of the common law-courts, or court of Chancery, is at this time more in quantity than four of the first and fundamental law-books of the realm; namely, *Glanvil*, *Britton*, *Horne*, and *Littleton*.

The attorney's practice is grown, and still growing to such a height, that they are ignorant

* "He will *pick the lock of the strongest conveyance*," says the facetious Dr. Fuller, "or *creep out at the lattice of a word*." — See his *Profane State*.

of their own proceedings, without continually referring to the aforesaid enormous manuals; and are afraid of each other, lest one should chance to comprehend more than his fellow:—for nothing is more frequent than for an attorney to chouse his brother in point of practice; neither is it accounted unfair, even among the fairest practitioners. *Look sharp*, is the word; and *Catch as catch can*, is the game.

This arises from the continual multiplication of verbose acts, and amendments of acts—of rules and orders, and new rules and orders—of modern precedents, and more modern precedents.

Whereas many nations of *Europe*, at this day, carry their code in their pocket; with the same ease as we our Common Prayer, or Court and City-Register.

SECTION III.

Uncertainty of the Law.

THERE would be few law-suits, and mankind be left to follow their vocations in peace, and security, and brotherly love, if every one was previously apprized of the folly and uncertainty of going to law. Instead of which —

“ You

"You have a good action!" says one attorney. — "No man can have a better defence!" says another. — "Courage, my lads! keep it up! never flinch."

"Well, I leave it to *you*," says the plaintiff; "you'll make the *best* of it." — "And I to you," says the defendant; — "you'll do *what you can*."

"Doubtless, we'll make the *most* of it," — say the sniggering rogues.

As it is the duty of one side to maintain truth, so also it is the especial business of the other, to evade and confound her as much as in him lies.

He was aware, from the beginning, it was a damnable plea; — yet he knew also that such damnable pleas had sometimes succeeded — to instance only such a case, and such a case, and such a case: — in every one of which blind JUSTICE was bothered till she became deaf; — and naked TRUTH was discarded as a vagabond.

He considered the proffered fee was due, no less to his family than to himself; which having accepted, it lay upon his conscience to do his client's dirty work.

A mighty pretty, honest, manly sort of an employment you appear to have taken up!

A man gains his suit; — yet goes away dissatisfied.

C

He

He has obtained a verdict, with damages—yet is he much time and money out of pocket.

The unsuccessful gamester, and the successful suitor are in a like situation.—‘Where’s all your money?’—‘I left all mine at the hazard-table. “Where’s yours?”—for I hear you gained your cause?’—‘The lawyers divided it among them.’

Dame *Law* is remarkably provident towards all her members:—those she considers with the fond partiality of a parent to her legitimate issue.—No *Antient Britons* can be more zealously attached to remotest genealogies, nor *Mountain-Scots* to their clans—every one has a claim to a kindred portion—all else she accounts aliens and strangers.

SECTION IV.

Inns of Court and Chancery, formerly Law-Schools, but no longer such. — Grandeur of the Law, at what Expence, and by whom supported.

IN antient time, while our good old law subsisted in its primitive purity, a small corner, adjoining to the palace at *Westminster*, was sufficient to house all its ministers—they resided there, and there only.

In

In after-times, as the administration of justice, and the determination of right and wrong became more and more a trade; twelve spacious courts were provided for them, their students, and successors. †

But, in our day, twice that number of courts would not contain the twentieth part the tythe of them!—they swarm like locusts over the whole surface!—Sure threat of famine to the inhabitants!—and, locust-like, devour a considerable part of the richest produce of the land!

The grandeur of the law is, in a great measure, supported by the most grievous oppression of individuals!

Writs, and bills, and stamps, and seals, and signatures, and filings, and fees of office, with countless *et cætera*, rob individuals of such an immense sum as few of the national taxes can equal.

What share of the national riches, and fruit of the national industry, is spent in support of the

† There were no less than fourteen Inns of Court and Chancery in *Fortescue's* time, and long after; which were so many colleges, forming one grand law-university: wherein the law was taught and lectured upon by able appointed readers. — And not the law only, but various polite accomplishments: more especially in the Inns of Court. — Those who learned to moot, might also learn music; to dance, and to fence, and the heroic science of Armory. But the best institutions, from disuse, fall insensibly to nought. And yet, when reality no longer exists, something may still be conceived by figure. By public actual *eating*, is now understood private intense *study*; and *keeping commons*, implies *keeping terms*.

grandeur of the law, and of lawyers and law-ministers, of every denomination — Law-officers, law-placemen, law-finecures; clerks in court and clerks out of court, with their dependents; attornies and solicitors, and endless hangers-on; bailiffs and their followers, keepers and their crews*, would puzzle arithmetic itself! — If we state it at FIVE MILLIONS annually, considering what a vast army is to be maintained, and many to be enriched out of it, we shall certainly be several thousands within the mark.

If this is found to be true, and Lord Newhaven's computation is just, the grandeur of the law is supported at no less expence than one twentieth of the annual income of the nation.

* — Serjeants, Bums of every kind,
Tipstuffs, and all those officers
That *squeeze a living out of tears.*

See Mandeville's *Grumbling Hive.*

SECTION

SECTION V.

Insensible Growth of the Grandeur of the Law—its present alarming Progress.—Professional Lawyers, in the Judgment of Lord Bacon, Harrington, &c. ought not to be Members of the Legislative Body.—Unconstitutional, and unwarranted by the Practice of former Times : — derived only from the Scottish Succession.

IT were a curious research, and well worthy the labour of the most able speculatist, to trace how plain and simple common law and equity arrived to its present astonishing grandeur.

Doubtless, it grew insensibly, as all other abuses grow ; from bad to worse, from simplest beginning, by little and little, to the full stretch of assumed authority !—not unlike the papal usurpation ; from whose jaws our consciences were no sooner extricated, than our property fell into the all-devouring fangs of the law.

One while, the church, or rather the priesthood, centered all power and consequence in the church, and carried all causes to *Rome* : in like manner, the state, or rather the lawyers, assumed all authority in the state, picked the bone of every controversy, decided all questions, and carried all causes to *Westminster*.

The grandeur of the law is making vast strides indeed ; and almost threatens to rival, or, at least,

to influence the grandeur and importance of both houses of parliament!—in each of which we have, and, it is to be hoped, always shall have, a sufficient number of wise nobles and commoners, independent, learned, law-bred, and well studied in the constitution of their country, without the interference of too great a number of lawyers by profession.

The great Mr. *Pitt*, while he was the great Mr. *Pitt*, was clearly of that opinion respecting the lower house; and we all know how he treated, and totally silenced one of the most eminent, boisterous bar-orators * of his time.

He well knew that mercenary pleaders are alike qualified to harangue on either side of the question; and so that the minister, or the occasion bids high enough, the point to be carried is of the least importance to the speaker. †

At present, every successful bar-orator and brow-beating counsel looks forward to a PEERAGE—and to be a CHIEF without it, will be singular, shortly.

None of my readers will suppose (at least, I hope not) that I mean to glance at our present illustri-

* The late honourable *Alexander Hume Campbell*.

† Instances to confirm this truth are not rare; but the case of that learned and complete common lawyer *William Noy*, attorney-general to K. CHARLES I. shall suffice. A man of profoundest law-erudition—one while, with the parliament, a stout patriot *against* the prerogative-royal; “but,” says his biographer, “no sooner did the King shew him the lure of advancement, but, quitting all his former inclinations, he * wheeled about to the prerogative.”

first as to, *lexis or reason at home bar*, *ous*

ous Chief-Justice—a man, noble by birth; but far more ennobled in himself—a man, deserving all honour; yet, in himself, superior to any that could be conferred on him—of such rare excellence, such distinguished parts, that no advancement can make him greater than he is—greater than Heaven has made him!

But precedents of that sort are very rare*—and lawyers are all agreed that precedents are dangerous things—more especially, if we add, when it is become the mode to bargain and sale for highest dignities. †

Sir *Thomas Egerton*, the good lord keeper, created Baron *Ellesmere*, and at the same time appointed Lord High Chancellor of ENGLAND, anno 1603, the 1st of JAMES I. the immediate predecessor of our immortal *Bacon*, appears to have been among the earliest law-lords of parliament:—since whose time, they have increased in such numbers, particularly in our day, that in half a century we may expect one half of the house of peers—the chamber of statesmen, heroes, and first-rate churchmen—the nation's glory—its highest judicature, and last appeal!—to be composed of law-lords, and the sons of law-lords.

* We have only two instances in the upper-bench, before the present; and both of modern date; to wit, Sir *Robert Raymond*, created Baron Raymond, anno 1731; and Sir *Philip York*, created Baron Hardwicke, anno 1733. But, in the court of common-pleas, I know of none before the present eloquent Chief.

† A peerage, a pension, or reversion for myself; a bishoprick for my brother, &c. &c.

Yet we read of no Lord *Glanvil*, Lord *Britton*, Lord *Bracton*—and even the great *Coke* himself died without a peerage, though he had acquired riches enough by the practice of the common law, to have purchased a principality.*

The great lawyers of old, whose names are revered at this day, considered their high calling as the utmost summit of human elevation. They and their successors (with a few exceptions) for several centuries, were the guardians of the nation's laws, and the watchmen of the people's liberties—far prouder of such sacred distinction, than of being the mouths of faction, the belweethers of party, and the tools of ever-changing ministers.

The peers of the realm and the lawyers, however eminent, were formerly considered as distinct bodies. A man might, *formerly*, have been a sound lawyer and able orator, without ever dreaming of being called up to the house of peers, any more than a skilful physician †, or expert surgeon.

Many good reasons might be urged against admitting lawyers to be of the legislative council. *Harrington's* is striking and cogent. “Accumu-

Coke, when attorney-general, is said to have made upwards of £5000. a year by his practice—a prodigious sum, almost 200 years ago, to have acquired by any craft or calling, except that of the common law.

† The ennobling of physicians, is of far greater antiquity than the practice of ennobling common lawyers—The Emperor *Constantine* ennobled his physicians, creating them Counts—nor is such distinction of that learned body unusual in the empire, and in many other parts of *Europe*, at this day.

“lation

“ lation of magistracy,” says he, “ is neither *just*
 “ nor *equal*; nor the confounding of *executive*
 “ and *legislative* magistracy *safe*.” †

But Lord *Bacon*, to the same point, is unanswerable.—“ Lawyers,” says his Lordship, “ being
 “ obnoxious, and addicted each to the laws of
 “ their particular country, have no freedom nor
 “ sincerity of judgment, but plead, as it were, in
 “ bonds. Certainly the cognizance of these
 “ things is most properly pertaining to political
 “ persons, who best know what stands with hu-
 “ man society, what with the safety of the peo-
 “ ple, what with natural equity, with antient
 “ prudence, and with the different constitution
 “ of commonwealths. These therefore, by the
 “ principles and precepts of natural equity and
 “ good policy, may and ought to determine of
 “ laws.” ‡

This topic is worthy of being enlarged—and, in conclusion, perhaps, it will be found, That the Law is a distinct body in the state; and that lawyers are only to be consulted (the judges in the upper, and the attorney-general and solicitor-general in the lower house) as occasions require—they may advise, but no further.

Professional lawyers, holding the highest lucrative offices, are still but the servants of the state, in the most honourable civil department:—but it never was intended in any constitution, in any form of government, that they should be the mas-

† See his Art of Law-giving.

‡ De Augm. Scient. lib. 8. ca. 3.

ters and rulers of the people.—It is the laws that bind and govern, and not their expositors.

Lord *Herbert* remarks, that in the first council of K. HENRY VIII. selected by his wife grandmother, the illustrious Lady *Margaret*, Countess of *Richmond*, “there was not one common lawyer.”

“The frame of this council,” says his Lordship, “was of scholars chiefly, and soldiers.—Among them, there were divers able to *execute* and *perform*, as well as *counsel*. So that, without divulging any secret, or descending from the dignity of their place, to require advice from their inferiors, *they moved in their own orb*. This held up the *Majesty* of the council.” †

Peradventure, it was thought the people had lately suffered enough, through the wicked counsel of lawyers; and had been sufficiently drained and squeezed in the former reign, by the illegal proceedings and exactions of *Empson* and *Dudley*, both lawyers ‡, and of the council to King Henry VII.

If lawyers, by profession, gain the ascendancy in both houses, it may be productive of much mischief—Scheming is their practice, and speaking is their trade.

Our statutes will be no longer the statutes of our representatives—the representatives of a free

† See his Life of K. Henry VIII.

‡ *Pol. Virgil* calls them *Judices Fiscales*. — *Dudley* was a Serjeant at Law.

people—and of our high-born, free, and independent peers; but the laws of professional lawyers,

This appears to be a matter of great moment, and worthy the consideration even of the most considerate.

This swelling of the peerage with ministers of the law, might probably, originate from the *Scottish* succession to the crown of *England*—as, in fact, it did.

For in that antient sister-country, all the great law-officers were lords of parliament, or lords by custom—so that they had, not only their lord chancellor, lord president, lord justice-general—but also their lord justice-clerk, lord advocate, and lord register:—and the judges who compose the court of session, are called lords of council and session: and such of them as are appointed to the circuit, are called lords of the circuit and lords of justiciary. Every member of the court of session, upon his advancement thereto, affects to drop his surname, and assumes the title of his *Lairdship* (if he has any) or that of his villa, or local situation; styling himself thereafter, my Lord *Black-muir*, my Lord *White-house*, my Lord *Tweed-side*—and such is the custom at this day.

But such empty assumptions die with their possessors, and fall infinitely below the dignity of an English peerage, which was formerly accounted one of the first hereditary honours in the world.

SECTION VI.

Oppressive Law worse than no Law.

MANY of the first fortunes in this kingdom have been raised, within these two hundred years by the practice of the law:—many of the fairest fortunes, within that period, have been ruined by the same practice.

'Tis much wiser and abundantly cheaper to put up with loss and damage (though perhaps not inconsiderable) than to contest it.

A wicked relation or neighbour has brought a vexatious and expensive suit upon me! I am obliged to defend it—and though innocent, it cannot terminate but in my ruin!

Is it sufficient that the worthless plaintiff is nonsuited?

Litigious suitors cannot be too much discouraged—In many cases, they ought to be severely fined or otherwise punished.

The same uncertain success and cruel expence, that eggs on the unjust man to the most unwarrantable litigation; frightens the just man, and deters him from prosecuting and defending his claim,

“ I'll give it up,” says he, “ at once!—my
 “ peace is more to me than my estate!—my best
 “ portion

“ portion is my peace !— he who would rob me
“ of that—is welcome to the other !—

“ Besides, who can foresee when this will end?
“ —For, as I understand, in law-business, nothing
“ can be *determined*, save that every thing is *inde-*
“ *terminate*.—

“ I may be drawn on from term to term, and
“ from year to year—and, perhaps, not live to
“ see the end of it !—

“ I shall be robbed of my time, as well as my
“ money ! the short portion allotted me to make
“ up my long accounts !—

“ Surely time was not given us only to carry
“ on law-suits !—

“ No, hang the estate ! let it go—I never was
“ a sportsman in my life ; and now shall hardly
“ think of hazarding my slender means, and
“ trying my fortune, for the first time, in the
“ lottery of the law.—

“ Better to have no law, than oppressive law !

“ Nay more—I may entail misery upon my
“ heirs—leaving them to finish, what I had in-
“ considerately begun—and give them just cause
“ to curse, instead of blessing my memory !”

SECTION

SECTION VII.

Serious Subjects too often lightly treated in Law-Courts.—Specimens of Bar-Oratory.

THE man who goes to law on the score of reputation, generally comes out of court more bespattered than he went in — so lightly do those gentlemen treat the bubble *Reputation*.

If scandalous reports and opprobrious names be the injury — “let him prove his damage.” —

‘Perhaps he cannot, according to your sense of injury, in that nice particular — He can only prove, that he has been most undeservedly dishonoured, and cruelly slandered.’

“What can he prove no damage? Why, then he has sustained none. — A clear case, my Lord! — Where no damage can be proved, there can be no injury. — A few hasty expressions — which might as well have been spared — and some names, not of the most enticing sound” — (by which the gentleman may be nicknamed as long as he lives) “but no damage.”

If HORNS is the word — ’tis the highest joke imaginable! — enough to set the court in a roar! *

* Might we not say to these merry lawyers as *Solon* said to *Thestis*? “If we countenance such jesting, we shall shortly find it in our contracts and agreements.”

We may come, in time, to make light of the most solemn pledges: — BONDS may be interpreted, Sheets of Paper, *with seals annexed* — and CHARTERS, Skins of Parchment, *with bits of wax dangling at them*.

—and

—and drive the poor cuckold, covered with confusion, for others guilt, quite out of the hall.

If personal libels and pictures are the pleas—who regards libels now-a-days?—They are become so common, that, it seems universally agreed, 'tis folly to take notice of them.

In these days of general detraction, who has escaped the poisoned shaft of calumny?—It were a difficult matter to fix upon any character of known worth and dignity.—And, for a Picture—

“Why, it may stand-a—for-a one man as well as another.—

“Who will-a take upon him to swear-a—I say, to swear-a, 'twas made for-a such a one?”—Tho' all the world acknowledge the likeness—so does the man, in heart, who pleads against it.

“Besides, this-a, is no portrait—this-a, as I take it, is what you call-a—a caricature.”

So much the worse, friend!

“Neither is it a picture—a picture-a, I humbly conceive-a, should-a be in oil-a and colours—or-a colours, without oil—So I apprehend-a, Gentlemen of the jury! a-everybody understands-a, a picture.

“But-a, my *Lud*! if your *Ludship* will indulge me—this-a is-a, no painting, or-a drawing with a pencil—this-a is-a, what you call an-a—engraving.—

“And

“ And yet, now-a — when I look at it again-
 “ a, it is not an engraving — an *etching-a*, or
 “ *hatching-a* — I take it to be —

“ Though-a, certainly, it looks-a more like
 “ *scratching-a*, with a *dry needle* —

“ Or *scraping-a* — Ay, ay, it is a scraping — sure
 “ enough, 'tis *scraping-a* — 'tis any thing, or no-
 “ thing — for I defy-a any unprejudiced mor-
 “ tal to discover-a — the least harm in it — a mere-
 “ a imagination — a *jeu d'esprit*. ”

That last happy conjecture has totally effaced every line of malignity ; and it remains as harmless as a plate of plain copper.

How should any man be able to speak to the delicate point of reputation, who has shook hands with modesty, and even shaken off common decency ?

Do what you will, say what you list, you shall never want a frontless advocate.

The man who should dare to set about torturing †, confounding, and explaining away the obvious sense, the true spirit and import of a law, for a fee or otherwise, deserves reprehension.

There is an antient law of our sister-country to that effect —

An act of the 22d of James I. of Scotland, made in the parliament of *Perth*, anno 1426 :

† “ There is no worse *torture*, ” says Lord Bacon, “ than the *torture of laws*. ”

The

The title—"That nane interpret the Kingis
statutis. Cap. 121.

"Item, The King of deliverance of counsaill be
maner of statute forbiddis that na man inter-
pret his statutis utherwayis, than the statutis
beiris, and to the intent and effect that thay
war maid for, and as the maker of thame under-
stuid: and quhase dois the contrarie, salbe pu-
nist at the Kingis will."

SECTION VIII.

*Simplicity of our old English Law—presumable from
Trials by Juries.—Boasted Antiquity of the Common
Law, doubtful.—Courts of Justice improper Scenes
for Merriment.—Jurors, Judges both of Law and
Fact.—A Word to Jurors.*

WE must go back to far distant time, even
to the days of EDWARD I.—our English
JUSTINIAN, as Judge Blackstone calls him—and
thence trace the simplicity of our laws, and the
purity of their administration.

"The pleadings, consequent upon writs," says
that learned judge, "were then short, nervous, and
perspicuous; not intricate, verbose, and formal."
The legal treatises, written in his time, as *Brit-*

“*ton, Fleta, Hengham* and the rest, are, for the
“most part, law at this day.”

To boast of the antiquity, simplicity, immutability, and security of the common law, at this time, is all a joke.—We have, in a manner, lost sight of its antiquity.—It can be traced, with certainty, only so far and no farther—all beyond is mere suggestion—favourite notions of eminent professional men (*Fortescue, Coke, &c.*) studious to aggrandize their own profession.—Many valuable parts and scantlings, no doubt, were gathered from the Saxon and Danish constitutions, and happily interwoven with those of later date; but, surely, nothing like a system of laws, such as prevailed at, and after the Norman conquest. Its simplicity is becoming more and more complex every day.—A bigotted papist might as well set up to be an advocate for primitive christianity; and endeavour to prove it by his own practice. Its mutability is to be traced through almost every reign; and its security trembles upon uncertainty.

Trial by juries is a plain argument of the ancient purity and simplicity of the common law; otherwise common men could not be judges. They could never take upon them to define unintelligible jargon of no one language*; nor determine upon what was involved in a cloud of dark and ambiguous words.

* A gallimaufry compound of obsolete French, formerly called, *Pedlers French* (*Galimofr  , Jargon de Galimatias*—*v. Cotgrave's Dict.*) and *Anglo-Law-Latin*, understood only by some few English common lawyers.

Surely

Surely the laws of *Englishmen*, by this time, ought to speak nothing but plain *English* †.—Nor is it sufficient to say we have translations of the principal books, either in whole or in part—for we have none of the earliest and fundamental books, that have the sanction of legislature, without which translations are of no authority.

At present, they commonly decide as well as the confusion of the matter will permit them—though, I think, in some modern cases, it cannot be said they have always strictly decided according to law; but rather according to their own judgment—which, every now and then, happened to be directly contrary to the scope and meaning of the law.

In our time, a frontless counsel who saps the very foundation, and wrangles away the spirit of a law—and brangles the jury over to his opinion, which he knows to be false and black as his gown, will be sure to be distinguished, and to become a rising man:—whilst the just advocate of the laws of his country, deploring the abuse he cannot remedy, retires from the noisy bar, and contents himself with chamber-practice—thereafter giving his sage opinion of *what is law*—not of what may be found to be such.

1. robes
were worn
in 1788

Trial by jurors is one of the boasted rights of Englishmen—many advantages accrue to them,

† What a jest have reformers, even lawyers, made of Hebrew rituals, and Roman missals and breviaries, and Greek liturgies, and the sacred writings being still retained in the learned languages, unknown to the vulgar! How preposterous then, that the law of a free people, in whole or in part, should be in any but the vernacular tongue!

above other nations, from that grand privilege — many disadvantages also arise to them from the same privilege.

Whether jurors are judges both of law and fact, is a question which has been much disputed of late years *. The juror's oath seems to decide the question on the side of fact only — but in cases where damages, often very considerable, are given; they, unquestionably, act as judges of both. — And if we refer back to the ancient Gothic laws, from whence the Saxons, Danes, and Normans derived their juries, we shall find they were judges, as well of law as of fact †.

— But if jurors are, positively, judges, both of law and fact; 'tis a weighty concern indeed; and should be managed nicely, seriously, conscientiously! Freedom, property, personal injury, assault, life itself, and an endless train of guilt, are improper subjects of merriment; and courts of justice the most unfit scenes for jests. And yet how frequently are they made such, by the futile wit of counsel, playing upon the shallow pates of jurors.

Jests should not be suffered in courts of justice. They are as incongruous there as in churches.

* This important question appears to have been no sooner revived, in the last century, than it was decided in favour of jurors: as may be gathered from some special cases; but from no one more so, than the trial of L. Col. John Lilburn, anno 1649 — contrary to modern law-doctrine, and the judgment of Coke. "*Ad questionem facti, non respondent iudices; nec ad questionem juris respondent juratores.*" The judges "are not to answer to a question of fact, nor the jurors to a question of law."

† The justicers, in our good old law, were only *assessores* (whatever they may have assumed since) to take the unanimous voice of the jurors, and to promulge their verdict.

in

in senates, and in councils. "*The place of justice,*" says BACON, "*is an hallowed place.*" So, it seems, it was accounted formerly; but it is now too often made a scene of *fun* and ribaldry. People flock to *Westminster* whenever any thing *droll* is expected (that is, something *ruinous* to the peace of families, and the reputation of individuals)—when some master-wits are to mount!—with as much avidity as to see the *Cheats of Scapin*, or any other comic exhibition. The audience turn out of court with vast satisfaction, and in full titter! Every one admires the astonishing wit, quaint questions, and smart rapartee of one counsel; and the matchless effrontery and amazing talent for scurrility of another!—but no one commends the sagacity of either.

"*It is a strange thing,*" says our incomparable Sage *, "*to see that the boldness of advocates should prevail with judges*"—and a little further, "*There is due to the public a civil reprehension of such advocates.*"

A weak brother, overpowered by a stronger; taking it for granted he shall find that strength in the law, which nature had denied him as an individual; brings an action against the brutal violator of his peace—Perhaps he had done wiser to have dropped the prosecution.

A remarkable instance of this kind is said to have happened a few years ago.

* *Bacon*.—See his *Essay of JUDICATURE*—the whole of which is admirable, and merits the particular attention of the gentlemen of the long robe, more especially the newly-pledged counsel.

One man was cruelly assaulted by another—beat, and pulled by the nose. The assault was fully proved; when the *unsamaritan* jury, after taking the premises into consideration, gave the plaintiff ONE FARTHING damage.

But why give him any thing? you'll say—O, for the joke's sake!—for the poor man went by the name of FARTHING-NOSE ever after—Ha! ha! ha!

“In the name of God! whose sacred name such jurors must have profaned, where's the jest?”

‘Why in the perjury—and in the conceit that twelve honest men would damn themselves, for the diversion of the court, and to entail ridicule upon their abused neighbour.’

SECTION IX.

Touching Oaths.

NO exposition appears to me to be more wanted, than one upon the nature of an oath—Not but that we have enow already—but they are, in general, too learned and too laboured—speaking and explaining more to the head than to the heart:—whereas such a one as I wish for, cannot be too simple and concise,

A positive oath, according to my notion, will not admit of any qualifying gloss, or the minutest mental reservation.

In

In a country, where swearing is so common — (though common swearing is punishable by statute) that every thing is determined upon oath :— where hardly any man is suffered to carry on his lawful business, without swearing and damning himself, much oftener than he is obliged to go to church :— Such a concise and friendly monitor, forcibly appealing to, and impressing the conscience of the swearer, I persuade myself would be of great use — more especially in this country, where oaths are administered in such a slovenly and unsanctimonious manner.

Some of the sections might run to the following effect:

“ That he who swears at random, makes light
“ of the most solemn engagement.

“ That he who swears, that the man he never
“ saw, nor, perhaps, ever heard of, more than
“ his name — is the man of his *free choice* — in
“ preference to another, whom he has seen, and
“ knows, and resides with — and is, probably, of
“ equal worth and abilities with the stranger ; is
“ tacitly guilty of perjury.

“ That he who accepts a bribe, or what is
“ tantamount to a bribe, contrary to the tenor of
“ his oath, is guilty of wilful and corrupt per-
“ jury.

“ That the briber, *in foro conscientia*, is alike
“ guilty with the bribed ; the tempter with the
“ tempted — as, *in foro justitia*, the receiver with
“ the thief.

“ That he who falsifies in the presence of God,
“ must be conscious that he is totally undeserv-
“ ing of the confidence of man.

“ That he who undertakes, upon oath, to do,
“ what he never meant to perform, is a liar and
“ a perjurer — And, if the service is of a public
“ nature, and paid for out of the public treasury;
“ the offence rises in proportion with the import-
“ ance of such disappointed service, and the
“ greatness of the received reward.

“ That he who swears falsely to the injury of
“ another, stands condemned by the ninth com-
“ mandment, and merits expulsion from all
“ society.

“ That he who taketh reward against the in-
“ nocent, is under a particular curse.

“ That he who swears falsely, to spare him-
“ self, or to defraud his neighbour, is a thief
“ and a perjurer.

“ That he who justifies for another, conscious
“ of his own inability, merely to countenance
“ fraud, stands in the same predicament — and

“ That he who, upon oath, wrongs the reve-
“ nue, robs the public, with the aggravated guilt
“ of perjury.”

I would have copies of them stuck up in
every part of his Majesty's dominions — as far
as the laws of England extend, in every quarter
of the globe —

Against

Against churches, chapels, conventicles, gates, walls, pillars,—even upon stiles and trees—

In all marts, meetings, fairs, exchanges, and places of public resort—

In courts of justice, judges-shops, justice-shops, and public offices—more especially in the three principal revenue-offices, the stamp, excise, and custom-house;—in the last of which, the latter clause ought to be printed in such staring capitals, that he who runs may read!

Common swearing, Heaven forgive us! is shocking— but common perjury is dreadful!

SECTION X,

Personal Arrest for Debt contrary to Magna Charta, and the Judgment of some of the first English Lawyers—Condemned by all civilized Nations—Many known Mischiefs resulting from the Practice, and still far greater to be apprehended—The Writ of CAPIAS the Glory of the English Lawyers, and Disgrace of the English Law—no less beneficial to English Lawyers, than the Pox to Surgeons—Case of the Marquis de Fratteaux.

THE law, or rather the infamous practice of personal arrest of a free-born subject for debt—more especially of the defendant, without previous notice, in his own house—as it is in daily practice and abuse throughout this kingdom, calls aloud for redress!—

It

It cries to Heaven!—and blasts the reputation of a country, in what it is so superiorly gifted above all other; its wisdom and its liberty!

It is not to be justified by any mode of reasoning; for it is against all right reason—nor even to be palliated.

“For every man’s house,” says *Blackstone*, “is looked upon by the LAW, to be his castle of defence and asylum, wherein he should suffer no violence. Which principle,” continues he, “is carried so far in the *civil law*, that, for the most part, not so much as a common citation or summons, much less an arrest, can be executed upon a man within his own walls,”

And our great law-oracle *Coke*, declares, “a man’s own house is his safest refuge. — *Domus sua cuique est tutissimum refugium.*”

If this is law—so speaks common sense, and the common right of freeborn subjects—so pronounces the civil law, and the law of every civilized nation—so says *MAGNA CHARTA*, so says *Horne*, so corroborates *Coke*—so confirms the PETITION OF RIGHT, granted *anno* 3. CAR. I.—(what need of further authority?)—so says *Blackstone*:—How chances it then, that the ruffian-intruder who shall dare to enter a man’s house, and drag the master from his *castle of defence and asylum*, is not treated like a thief, and a violator of his first privilege?—Let him be so treated!—and let honest jurors thereafter determine upon the legality or illegality of the proceeding.

The

The common lawyers have had it their own way, in this scandalous particular, long enough—'tis high time the people should assert their antient native right, and decide upon a question of so much importance.

Every individual has it in his power, under the common privileged abuse of personal arrest for debt, to be the immediate executioner of his fellow !

A designing man, under the mask of friendship, may entice an unwary into his books ; promise him time for payment—and, notwithstanding, throw him into prison next hour !

Any one may gratify his revenge upon another, thro' the medium of a slip of parchment !

There are shops where they are publicly sold, like common traffic — Nobody knows you, nor cares any thing about you—You have only to go to one of those, and kiss a nasty book, worn out with beastly thumbs and lying lips—pay your money (no questions asked) and come your way !

Shall it be at the option of one man, to seize upon another instantaneously — to distract his business, destroy his market, ruin his credit, and hurry him to prison without a hearing ? — This in a free country—in a commercial country too ?

Is he to be imprisoned first, when he stands charged with no other trespass but debt ; and heard, it may be some three, or six, or nine, or twelve months after — at the option of the plaintiff ?

What

What can be more inhuman, than to throw, at once (in an instant) a just debtor into the same situation with the most profligate felon? — in every respect the same, save fetters?

But his case is still harder than that of the hardened thief, or recreant traitor—who has undergone an examination; and, upon the judgment of the magistrate, stands committed.

To make him over to a set of merciless villains, called Bailiffs; who are a disgrace to the name of officer — and look rather like hangmen and tormenters, or hired assassins—than the sober ministers of justice.

To leave the honest debtor, newly dragged — without a minute's warning to provide against such an exigency; which, it may be, he foresaw not — to leave him (newly dragged, I say, from his habitation, family, business) in the custody of such a crew! — shut up in a cell belonging to the caitiff catchpole; secured by double bolts and bars—subject to the taunts and insolence of the abandoned minions of his power—wretches without bowels!

Is the liberty of a free man of a free country; or of a free citizen of any country, to be held so cheap, as to lie at the mercy of such shameless and remorseless villains, who live by profligacy, and make a trade of human misery, of sin and cruelty!

But lawyers have no cause to complain on that score, but much the contrary; for there the ruin
of

of thousands commences. Suit begets suit, and action quickens action !

The *Capias* is the glory of the English lawyers, and no less the disgrace of the English law.

The *Capias* to the English lawyers, is like the Pox to the surgeons: Remove the *Capias*, and one tythe of the attornies will salve all the sores and ulcers remediable at common law, and prevent manifold litigations and perjuries: — Fall upon a preventive for the Pox, and you will beggar half the surgeons in Europe, and save millions from untimely graves.

Besides, Lawyers are exempted ; tho' Divines, Commissioners of the peace, and Physicians are not. The dirtiest pettifogger, who has no cause to plead but the common cause of the distress and destruction of his kind ; which he pursues with unwearied diligence ; can boast a privilege that the worthiest subjects of *England* (the peerage and the people's representatives excepted) cannot—FREEDOM FROM PERSONAL ARREST FOR DEBT.

Again, let us consider this reproachful matter for a moment—

Shall it remain in the power of one subject, at the instant of his will and pleasure, to deprive another of his liberty—to immure him—to make him over to the tormenter ; who may deny him the use of pen, ink, and paper ; the benefit of a messenger ; the conversation of his friends—and all this under the colour, iniquity, or ill provision of the law ?

What

What Englishman doubts this serious truth?

May not any man as the law, or rather the abusive practice, stands at present, and is in daily usage, either by himself, or with the aid of an attorney, swear a false or disputable debt; and thereby obtain a warrant, for any sum, against another, who owes him little or nothing—it may be, not the twentieth part of what he has sworn to—or whom, perhaps, he scarcely ever saw:—and, upon giving the same to a rascal, who bears the title of officer; shall not the injured party thereupon be arrested, imprisoned—it may be assassinated—or gagged and conveyed out of the kingdom?

Have we not a memorable instance of a horrid effect, produced by this egregious oversight in our law, concerning personal arrest for debt—enough to make Britons, inhabiting that part of our island called England, tremble!—and foreigners quake, as if seized with the horrors of an inquisition, or *bastille*!—and surely enough to have alarmed any wise legislature, jealous of the public freedom, and no less of the freedom of every free individual, to guard against every possible mischief of that kind in future?—Yet does not the law stand, for the most part, as it did?

Was not a foreign nobleman, known by the title of the Marquis *De Fratreaux*—who fled to this kingdom (as it was said and generally believed) to avoid the resentment of an incensed father, upon some family difference—and after having resided a considerable time in this land of liberty—wherein all breathe the breath of freedom—
—as

—as well BLACKS as WHITES, according to the determination of a noble chief justice—

Was not that gentleman, somewhat above thirty years ago, seized by a couple of kidnapping bailiffs; armed with the authority of a writ, whereto was sworn a large sum of money against him—a debt which he had never contracted?

Was he not, upon that pretext, taken from *Marybone*, where he lodged, to the house of one of the assassins—thence, by the said ruffians, put aboard a vessel, and by them conveyed to *France*?—since when, he has never more been heard of.

Was any particular inquiry made after those villains? one of whom was, within these few years, and may be still living in a neighbouring French sea-port?—

Ought they not to have been demanded sooner than robbers, coiners, forgers of bank-notes, or even murderers?—as having brought a scandal upon the executive part of our law, under colour whereof they had perpetrated a crime, for which they should have been pursued to hell's gates for their destruction!

“ But wherefore strain your lungs so about the
 “ scoundrels?—for after all you have said, I
 “ question much, whether their offence exceeded
 “ a three-and-four-penny, or a six-and-eight-
 “ penny misdemeanour—and begging pardon
 “ upon their marrow-bones—and promising ne-
 “ ver to do the like again—*till they had as fair*
 “ *an occasion.*”

‘ I be-

‘ I believe you are in the right—a couple of
‘ well-tongued counsel, well-fee’d, might possibly
‘ have brought it to that easy issue.

The fate of *Fratteaux* might be frequently acted over again—Why not?—It would have furnished a pretty story for an historical play or tragi-comedy, had it happened about the beginning of the last century.

And if such mighty mischiefs rarely happen—as crimes of greatest turpitude, like comets, blaze not every day—it argues the vilest of the people, bad as they are, to be better than that law, that leaves an opening to them to commit the most detestable offences.

But there are many misfortunes, innumerable evils arising from that fell mischief, that crooked channel, which few contemplate, and still fewer endeavour to remove.—’Tis true, they generally light upon the poor, and those who are without means to redress themselves.

Law is expensive—so that the poor must be contented to sit down quietly with their injuries, lest a worse fate befall them. What can a man do, either as plaintiff or defendant, who has no money? for there’s no going to market, even *in forma pauperis*, without it.

SECTION

SECTION XI.

Imprisonment for Debt further condemned.—State of Debtors among the antient JEWS:—among the ATHENIANS, before the Time of SOLON.—SOLON's first Law released all Captive and recalled all Fugitive Debtors.—All Credit entirely at the Option of Creditors.—The Judgment of PLATO thereon.—Hard State of Debtors among the old ROMANS—its Reform effected by a general Outcry of the People.—Imprisonment for Debt reprobated by our antient and reverend Lawyer HORNE—his Objection unanswerable.

TO all this the lawyers, who have no other word but *action* in their mouths, reply—

“The injured have their *action*.—Any person arrested, has only to pay the money, or put in bail; which will gain him some time—or defend the *action* at common law.”

“But suppose he can't find bail—being charged with a much heavier debt than he owes? which would plainly appear upon trial:—The plaintiff, he is fully persuaded, not being able to prove one half, one fourth, it may be, not one tenth of what he has rashly and cruelly sworn against him. This circumstance, however, greatly alarms his friends (as they are called in the language of the world) who thereupon desert him.—Or the arrest is entirely false, groundless, malicious!—nevertheless, his friends keep aloof, and watch to see how Providence will enable him to get over it.”

E

“ In

“ In either case 'tis very hard—but, notwithstanding, if he can't bail, why—he must go to prison.”

‘ What, and try the merits afterwards ?

“ Ay—if he chuses it.”

‘ Is there no alternative ?’

“ None.”

That's a defect indeed ! — not but that *English* law-legislators have examples enow to warrant this barbarous usage ;—as may be gathered from antient obsolete laws, Jewish and Gentile ; Pagan and Christian ; which, in cases of insolvency, gave the bodies of debtors to their creditors.

The Jews, not content, like our *Christian* common lawyers, merely with the bodies of their debtors, took whole families—wives, children, and all !—But then it must be remembered, that if they had the service of such unfortunate debtors, they maintained them ; and neither suffered them to rust in idleness, nor to starve through want.—Their's was a state of healthful servitude, at large ; not pining inactivity, in prisons.

The Jews also had their Sabbatical Year of Release :—and our Christian acts of insolvency, commonly, come round every seventh year—unless opposed by lawyers, and other interested members of the same tribe—a tribe, in ENGLAND, almost equal to the TWELVE TRIBES OF ISRAEL !

The

The *Athenians*, before the time of *Solon*; and the *Romans*, long after, were allowed to sell the bodies of their debtors—and they did so:—in proof of what horrid barbarity the heart of man is capable.

But *Solon*, at once, put an end to such impiety!—(he did not consult the lawyers, whether it was expedient)—and, to the everlasting honour of his legislation, his first public act was, as *Plutarch* informs us, *That all debts should be forgiven; and that no creditor, in future, should have power over the body of his debtor.* And he himself tells us, *that he had brought back some fugitives for debt, who had been absent till they had forgotten their native dialect; and had released others, who had suffered a cruel slavery at home.*—But SOLON was no COMMON LAWYER.

All credit, required or obtained, is at the option of the creditor. No man can force money or goods from another, without committing a breach of the peace; which will render him liable, not only to be imprisoned, but to further punishment. But credit fairly obtained, the effect of mutual confidence 'twixt man and man; from whence reciprocal advantage, it is presumable, is to arise, cannot be tortured, by a full *sanhedrim* of common lawyers, *without a fiction*, into a breach of the peace. †

† Our great *Coke*, in one place, condemns law-fiction as unjust—“*Fictio legis iniquè operatur alicujus damnum, vel injuriam*: No man is to be injured by a fiction of law.” But then, unhappily for us, he justifies it in another—“*In fitione juris semper subsistit æquitas.*”—Equity, it should seem, is always to be found in law-fiction.—As if he had said, *falsehood is the test of truth.* This is law-reasoning, which does not convince at first sight—which cannot be understood without a periphrase. The latter maxim seems to be a flat contradiction to the former.

The laws of *Charondas* and *Plato* concur in this—All buying and selling, say they, shall be with ready payment: and if any man trusts, it shall be at his own peril. The law shall give him no remedy if he is cheated; for, by trusting, he brought the cheat upon himself.

The Romans, we find, long after the introduction of the twelve tables, continued the barbarous usage of permitting creditors to seize, and imprison, and abuse the bodies of their debtors: till, at length, it was so odious in the eyes of the populace, that an outcry against the further practice became so general and vehement, as even to threaten the life of the republic. It was therefore judged high time to deprive creditors of that cruel power, so derogatory to natural law, by which all men are alike free; and to fall upon some wiser and more substantial expedient in their behalf. Accordingly, in the year of *Rome* 428, a law was propounded, that creditors, thenceforward, might fall upon the means, not the men; and attach the goods of their debtors, and not their bodies—*bona debitoris*, says *Livy*, *non corpus abnoxium esset*.

Thus we see, as mankind emerged from barbarism, and men began to think, and to philosophize; the horrid custom of imprisoning for debt was set aside, and a more eligible course adopted for the satisfaction of just creditors; which has long been the practice of every civilized nation, save in *South-Britain*; where creditors, by the common law-courts, are still legally authorized to act illegally; and where such swarms of lawyers, and their wretched dependents

ents, are suffered to fatten upon the vitals of the unfortunate, by virtue of the cursed *Capias*.

Touching the illegality of imprisonment for debt in this country; hear our own HORNE, a writer as far back as the reign of EDWARD I. whom *Coke* so much commends,

“ The new statute for debts is *contrary to law*;
 “ for every imprisonment of the body of a man
 “ is an offence, if not for tortious judgment; and
 “ the law will not suffer any obligation, or vi-
 “ cious contract by intermixture of offence; and
 “ therefore it was to be avoided, as grounded
 “ upon an offence: for no honest man ought to
 “ agree to such a contract, which causeth him to
 “ offend, or to be punished.”

“ Again, it is contrary to the great charter,
 “ which enacteth, That no man be taken nor im-
 “ prisoned, if not by the lawful judgment of his
 “ peers, or by the law of the land.”

Imprisonment, we find, must, indispensably, be grounded upon an offence — *ergo*, “ No honest man,” says *Horne*, “ ought to agree to such a contract, which causeth him to offend, or to be punished.”

The reason is admirable, and reflects the highest honour upon the common law in that particular. One would think it impossible, that the practice of imprisoning for debt could exist, in a country where such strong sense, such cogent argument, was brought against it !

But what preposterous proceedings may not mercenary lawyers countenance and effect ?—

What abuses may not be committed, where justice is a trade, and the law a science?

"Happy that nation," says *Beccaria*, "where the knowledge of the law is not a science!"

SECTION XII.

A Word or Two touching Messrs. John Doe and Richard Roe.

THE style of writs is often ridiculous enough — to shew that three parts out of four of law-business, is made up of mystery—absolute jargon, in our day — and unintelligible to all the world, except to a small part of the huge body of the law — I mean *special pleaders*; the most intelligent men, and only adepts of the profession — without whose special aid, the noisy haranguers at the bar would be far greater small-talkers than they are. It is the peculiar business of the former to furnish the latter with the best materials; to confine them to points; to shew the strength of their client, and the weakness of his adversary; where the greatest stress ought to be laid, and the strongest argument exerted. — But, unhappily, they cannot always prevail with them to read their briefs.

Besides this chosen band, there are very few can read, and still fewer interpret them.

But where shall we find such another laughable writ — enough to have made *Democritus* split his fides

fides—as the common *capias*, or *bill of Middlesex*?—

What have Mr. *John Doe* and Mr. *Richard Roe* *
—(persons who never existed but in the fantastical pates of those who drew the bill) to do with defendant owing plaintiff twenty pounds?

Why, the answer is as ridiculous—Those imaginary beings (for such they are confessedly) we are told, are pledges for the plaintiff's prosecution.

O ho! are they so?—It follows then, by parity of reason, that defendant should have equal right with plaintiff, and be allowed to produce a pair of phantoms, such as Mr. *Miles Muzzle* and Mr. *Paul Puzzle*, instead of two substantial housekeepers as pledges for his appearance.

Again, the poor devil of a defendant, as if being in debt was not a sufficient curse, is charged with breaking plaintiff's close, or some such felonious trespass—he might, in truth, as well be charged with burglary, or robbing the mail.

What stuff is this? made up of imagination and falsehood!—and yet to make a most essential part of the abused law of a free and sensible people.

Some thousand years hence (for such absurdity cannot last for ever) methinks, I foresee that English antiquaries will be confoundedly puzzled, to find out who those honest gentlemen, Messrs. *John Doe* and *Richard Roe* really were,

* “We all know who STORMONT and WAY are”—but, says a curious inquirer, “Who the devil are JOHN DOE and “RICHARD ROE?”

who were the nominal authors of so much mischief in this country, in the xviith and xviiiith centuries. †

How chances it, that our ruffians in office, I mean bailiffs, have departed from the antient and universal practice in all civilized countries, of wearing the livery or badge of their employment?

The varlets and serjeants, as they were called formerly, were distinguished by their habit — They used no counterfeits, says *Ben Jonson* *

It appears to me, to be beneath the dignity and purity of the law, that they should. No part of justice and the law, I humbly conceive, is to be acted in masquerade—that were to make downright mummers of their inferior ministers—

Dangerous mummers indeed! — for they pass now in all manner of disguises; and, instead of the peaceable mace, the sober symbol of civil power, the villains commonly parade it with bludgeons and concealed weapons, as is notorious — yet not a lawyer is to be found who has honesty enough, to declare the practice infamous and illegal!

† To save the worthy Antiquaries some trouble, I beg leave to inform them, that I have met with a *JOHN ROE*, probably, an ancestor of our *Richard's*, who was called to the degree of Serjeant at Law, at the same call with the great *Brooke*, and still greater *Ant. Fitzherbert*, 18th Novem. 1511. an. 6. Henry VIII. — But of the family of *John Doe*, I have not, as yet, been able to make any discovery.

* “A man of my profession *never counterfeits*, till he lays hold upon a debtor, and says he *rests* him; for then he brings him to all manner of *unrest*.” — See *Every Man in his Humour*, Act iv. Sc. 2.

This was a common pun formerly, as may be gathered from *Shakespeare*, *Jonson*, and other dramatists of that age.

It

It is argued, they could not so readily acquit themselves of their service in a known habit — They would be liable to interruption, and even abuse.

Far less so, in my opinion, than at present. Is not the law strong enough to support itself? Besides, who shall dare to insult or oppose the avowed and liveried officer of justice, in the execution of his duty?

SECTION XIII.

State of Debtors in the United Provinces of the Netherlands.

IN the free states of the *United Provinces* in the *Netherlands*, where little freedom is, in comparison with what Britons boast, and have a right to enjoy; no inferior law-minister dares to enter the meanest citizen's house. *

His

* A Dutch merchant or shopkeeper, however involved, however embarrassed in his affairs, fears no Personal Attachment *in his own house*; and if he cannot go abroad in safety, he has the more leisure, at home, to reflect upon and adjust his concerns. He attends his counting-house, and warehouse, and serves in his open shop, as usual. He smokes his pipe at his own door, and walks to and fro upon the pavement before his own premises, without fear or molestation. Whereas thousands, with us, who might recover themselves, had they time to reflect, and to look about them; run wild, or are struck stupid, from the first apprehension of the horrors that attend the cursed *Capias*; and fall the easy prey of sharking attorneys and fell bailiffs.

What a horrible situation this law-ridden country is in; when we consider seriously, that every man who contracts a debt, makes an absolute transfer of his liberty; of which his creditor

His house is his strong fortress of defence against the face of his enemies; which he has an undoubted right to defend against every invader: and so far from daring to assault, and drag the master from his habitation for a charge of debt, that the freeman is at liberty to treat him after what manner he pleases, for encroaching upon his first privilege, and breaking in upon the repose of his family.—The question is not, *How he got in?* —But *how he came there at all? How he presumed to tread his premises, without his permission?*

This sounds somewhat like the voice of liberty! —indeed 'tis a voice which cannot be easily mistaken—so manly, so melodious, so dulcet sweet, as hardly to be counterfeited!—a happy tenor 'twixt the *Italian* shrill treble, and the roaring *British* bass.

Yet there are numberless debts contracted, and many ill paid in that mart of general commerce.

“ And how are creditors righted, and debtors treated?”

‘ With that equal justice and due decorum
‘ which befits the wisdom of magistracy (*composed*
‘ of FELLOW-citizens — NOT PROFESSIONAL LAW-
‘ YERS — for then they would never have done)
‘ presiding over one of the first commercial, opu-
‘ lent, flourishing, and best regulated countries in
‘ *Europe*.

‘ In common cases, that frequently fall, out be-
‘ twixt citizen and citizen; when one honest man

creditor may deprive him in an instant! — and that no man, who owes TEN POUNDS, is secure from a gaping prison; or can be said to be in safety, even *in his own house!* — Surely, none but common lawyers can defend such cruel, such preposterous proceeding.

‘ is

‘ is as averse to extreme rigour, as the other to
 ‘ unmanly litigation; the following is no unusual
 ‘ way of proceeding :

‘ One citizen, having a just demand upon his
 ‘ neighbour, requests his account, from time to
 ‘ time : till, at length, tired out with delay, he
 ‘ gives him this fair notice—“ Unless you dis-
 ‘ charge, or give security, by such a day, you
 ‘ may depend upon it, I shall cite you before the
 ‘ magistracy,”

‘ The time elapsed, and no payment made or
 ‘ security given, the debtor is summoned to at-
 ‘ tend the court, on such a day.—He dares not
 ‘ disobey.

‘ The parties met — not by their *attornies*, but
 ‘ face to face—the creditor prefers his complaint;
 ‘ to which the debtor replies. Both are alike at-
 ‘ tended to—Justice knows no distinction of par-
 ‘ ties—the creditor and the debtor are the same.

‘ Here it behoves either party to speak truth,
 ‘ and nothing but truth—even without an oath.—
 ‘ Oaths seldom bind, after truth ceases to be ob-
 ‘ ligatory.

“ You are here met before us for justice, and
 “ you shall have it : but remember, each of you,
 “ that we rely on every word you say—No shuf-
 “ fling, no evasion, no lying !

“ The man who dares to falsify before the ma-
 “ gistrate, deserves no favour !—Now speak your
 “ complaint as a man, and as a just man.”

But I beg leave to digress a little—

SECTION

SECTION XIV.

A Digression, touching this PAPER-AGE, &c.—Common Law, the Englishman's Birthright.—Distinction between Common Law and Equity.

IN matters of debt, a question frequently arises, which sorry attornies and dirty bailiffs are unconcerned about—for which the common law has made but a scanty provision, in some cases; and, in others, none at all.—How, and after what manner, was the debt contracted?

Goods sold and delivered, and proved to have been delivered, is not altogether sufficient in numberless cases.—What sort of goods, how conditioned, how rated, how delivered?—Under what verbal promise or written agreement, respecting time, on the side of either party?—whether to be paid for, when sold; or returnable, if not sold?—with infinite other circumstances, of the highest consequence in trade, deserving the closest consideration, and requiring the most unprejudiced and refined distinction to unravel.

Paper produced and identified, carries no proof after what manner such paper was obtained: far less does it evidence or discover any secret reservation between the parties.—

This is a PAPER-AGE, for mutual conveniency—nine parts out of ten of the trade of this country,
is

is carried on thro' the medium of accommodation-paper.—

The GOLDEN, the SILVER, and the IRON-AGES, are long since past,—the two former, *never to return!* — we are now, happily, arrived at the PAPER-AGE!

The abuse of which paper is a further consideration, as it regards usurious discounters, and harpy money-lenders; prodigal borrowers, and needy tradesmen.

In all which cases, were the parties cited to appear face to face, they could satisfy the court in a few minutes, better than a Chancery bill of twelve hours long, or all the wrangling lawyers in the kingdom.

Well, if you are disappointed in one court, I am sorry for you—but, Heaven be praised! we have more courts than one.

Our forefathers, many of whom were lawyers, have provided us with an ample portion of law!—

“No free-born Englishman,” say they, “shall want law — ’tis his birthright! — his inheritance!”—*Optima hæreditas!* ‘his best heritage,’ Coke calls it — ‘as long as he has any money in his pocket.’

We have a court — the peculiar blessing of which is, to mitigate the severity, and abate the rigour of the common law-courts: wherein the nicest matters are investigated, and weighed with learned and just distinction—from which tribunal,

to

to the honour of a long succession of great and able presidents be it spoken, few causes—very few indeed, have been appealed and reversed, in comparison with the number of equitable decrees established. — But it is rather expensive carrying business thro'.—

“ But wherefore lead me a dance thro' many courts? — why refer me to another, when I stand *here* for justice and my right? Is not this a court of justice?”

‘ Doubtless—’tis a court of common law.’

“ Is not a court of common law, a court of justice?”

‘ Unquestionably — every court of law is a court of justice.’

“ Well then—what hinders?”—

‘ Nay, ’tis all over with you *here* — your relief now must be in *equity*.’

“ What’s that?—Is not common law, *justice*; and justice, *equity*?”

‘ They are all the same, in one sense—and yet they differ widely.’

“ JUSTICE and EQUITY differ widely! — How can that be?”—

‘ No, no;—they are the *same*—all but the *difference* — which proceeds from their having —
(what

‘ (what shall I call them ?) — a kind of different principles.’ —

“ Different principles, proceeding from one and the self-same immutable principle ! — I don’t understand you ! ” —

‘ The error lies in your want of comprehension.—Know then, that the justice of *common law* is one thing, and the justice of *equity* another.’

“ Justice, and equity, and common law ! — you confound me ! — and, I fear, you confound yourselves ! ”

‘ If you mean to obtain your right, you must pursue it closely ; and resolutely fight thro’ the weapons of your defence ! — But if you desert your property, you will have nobody to blame but yourself.’ —

“ Justice, and equity, and common law, I begin to consider as different expedients, for fleecing individuals.”

‘ Why loiter, then ? — why not pursue it ? — when I can lead you to the very spot where it lies ; carefully and curiously wrapt up in a napkin of many folds.’

“ Because I foresee I am in pursuit of a chimaera, which has sufficiently drained me already — and should have lost heart long ago, was it not that I observe those honest Gentlemen, my upright counsel and most disinterested
“ rested

“ rested attorney, are so zealously bent upon
 “ doing me right, that they will *not* give it up—
 “ as long as I have a guinea left.”

SECTION XV.

Dutch Determination between Debtor and Creditor.
 — Quibbling Serjeant at Law.

BUT to return to my Dutch determination,
 which is somewhat more simple.

Magistrate to the Creditor.—“ Does this man
 “ owe you so much, upon such and such credit
 “ —in every respect according to the manner in
 “ which you have stated it; and conformable to
 “ this account that lies before us? — Answer,
 “ upon the faith of an honest man, and a good
 “ citizen!”

Creditor.—‘ He does.’

Magistrate to the Debtor.—“ Do you, upon the
 “ same faith, deny the debt, or dispute any part
 “ of it?”

Debtor.—‘ I confess the debt, and admit the
 “ justness of his demand in the fullest extent.’

Magistrate.

Magistrate. — “ Why then don’t you pay the
“ honest man his money ?”

Debtor. — ‘ I cannot at present — it is out of
‘ my power.’

Magistrate. — “ It appears you have had every
“ reasonable indulgence ; and we should be sorry
“ to find you have made a bad use of it. — You
“ bear a respectable character in your neigh-
“ bourhood, as far as we have ever heard — No
“ complaints have been lodged, no misconduct
“ alleged against you. — In what time, think
“ you, can you satisfy him ?”

Debtor. — ‘ In six weeks — three months — six
‘ months — (any given time).

Magistrate. — “ In that case, it would be very
“ hard, that one citizen should have it in his
“ power *totally* to ruin another — neither does
“ your creditor seem to be of that malignant dis-
“ position. — How stands the state of your affairs ?”

Debtor. — ‘ Blessed be God ! well — at least,
‘ safe.’

Magistrate. — “ Have you sufficient, at the
“ long run, to satisfy all just demands upon
“ you ?”

Debtor. — ‘ I hope so — and something to spare :
‘ — at present, ’tis rather hard with me — I have
‘ lately over-purchased, or over-paid, or over-
‘ credited — but matters will come round
‘ shortly, and I shall be in a condition to sa-
‘ tisfy every body. — Mean while, I am always
F ‘ ready

‘ ready to make a full disclosure of my debits
‘ and credits, to whomsoever they concern.’

Magistrate. — “ Spoke like an honest man ! —
“ the time you require is granted. — Do what
“ you can for your creditors, which every just
“ dealer considers as doing for himself : — When
“ the limited time is elapsed, if you find you
“ can’t satisfy, apply to us, and you shall have
“ further indulgence —

“ But do not drive matters too far — to too
“ great an extremity. — If you find you can’t
“ go on, better to break off in time. — Em-
“ bezzle not the effects of your creditors, nor
“ persevere in disappointing them — neither dis-
“ tract yourself ! —

“ You know you may, at any hour, come
“ here and surrender your ALL in their behalf. —
“ From that moment, no charge of guilt lying
“ against you, you are a free man.

“ The prisons of our country were construct-
“ ed for felons, traitors, incendiaries, sharpers,
“ vagrants, loose-livers, the profligate, seditious,
“ and incorrigible — not for *naked*, if *honest*
“ debtors.”

Debtor. — ‘ God prosper the states of the *United*
‘ *Provinces*, and preserve your lordships !’

This, you’ll say, agrees not with the present con-
stitution and custom of our country, where LAW
and EQUITY bear all before them. The lawyers,
with us, at an enormous expence, undertake
and decide every thing ; the magistrates, scarce
any thing. The lawyers, self-raised, extol one
another

another every-where; and no less deery the magistrates *every-where*. The lawyers, *now*, are the only men; the commissioners of the peace, our *quondam* justicers, our most antient and constitutional power, are become the mockery of law-courts. It should seem as if lawyers procured puzzling laws to entrap them. — In fine, the law is *up*, the peace is *down* — I am heartily sorry for it!

But, according with the case before recited; I think every reasonable man must allow, it is better to satisfy just creditors, as far as we are able, than to waste their substance in paying chancellor's seals, and law-court writs, and nominal clerks, and attornies costs, and bailiffs' warrants, and spunging-house reckonings, and keepers fees?

But as the law stands at present, how are they to be avoided? — I wish Serjeant PUTCASE would inform us.

Serjeant Putcase. — “The case is clear enough — by keeping out of debt — *Out of debt, out of danger*, as my brother ADAGE says.”

Author. — ‘Nay, but that’s a quibble, Mr. Serjeant — for I suppose the man already to be in debt; a circumstance scarcely to be avoided in a commercial country.’

Serj. Putc. — “Then let him prevail upon his principal creditor to take out a commission.”

Author. — “I will suppose he owes a thousand pounds, and has not above a hundred to divide — methinks ’twere better the creditors had it,

‘ than the lawyers — for the commission, as I understand, will cost very near that sum.’

Serj. Putc. — “ So much the better ! for then he’ll come in for his certificate for nothing ;
“ Ha ! ha ! ha ! ”

Author. — ‘ I know, you gentlemen love a joke, cost what it will. — But suppose he should never be able to get his certificate ? ’

Serj. Putc. — “ Then, the worse luck for him.”

Author. — ‘ So where much is, the lawyers content themselves with a handsome share ? —
‘ Where little, the law sweeps all ? ’

Serj. Putc. — “ Ay, to be sure — how can they take less ? ”

Author. — ‘ I find there is no talking to a lawyer, but in his own way.’

SECTION XVI.

Nothing ought to be so cheap as the Administration of Justice. — The most exalted State of Royalty.

IT were a curious annual register (and such a one, in time, may come to be printed) to read what numbers are yearly baffled, distracted, impoverished, and totally ruined by the chicanery, oppression, and infamous practice of the common law.

Nothing

Nothing ought to be so cheap— (not even the vital air we breathe, more free) — so ready, so at hand, so salutary, as the administration of justice, and the equitable determination of the laws of a free people. — Nothing is so expensive, so dilatory, so ruinous as the process of the common law and court of equity.

We cannot well conceive a more exalted state of royalty, than that of a king, *in person*, sitting in judgment, to hear the complaints, to redress the wrongs, to relieve the grievances, and *freely* to administer justice to every one, according to the clear unsophisticated law of the land.

Such glorious scenes are of great antiquity — they have been acted by some of our princes formerly *; and are to be seen in some countries of *Europe* at this day. And not in *Europe* only, but in *Asia* and *Africa*. — Even Barbarians (I mean the states of *Barbary*) exhibit this splendid scene of free justice. The Dey of *Algiers* sits in judgment almost every day.

But we should think the sovereign mocked his humble suitors, if to obtain justice, it frequently cost the petitioners, ten, twenty, forty times more than the value of the wrongs sustained, or the grievances complained of; to be divided among a train of useless followers — no matter of what livery or complexion — and consider the whole as a piece of state-pageantry, and oppressive venality.

* The *King's Bench*, so called, because the kings were wont to sit there as presidents, *in proper person*. — See *Holland's Camden*, 1637, page 178.

In this particular, all our old historians and antiquaries are agreed.

SECTION XVII.

Of Attornies.

THE law punishes fraud and extortion in individuals, yet countenances, by not, at once, crushing and effectually restraining the grossest exactions in attornies, and still meaner ministers of its own body.

Any man worth a thousand pounds, and owing a single hundred to ten several creditors, which he cannot answer ; and having as many actions to bail, to stave off, and to defend ; may be reduced to beggary within a few weeks — all his substance scarcely being sufficient to pay costs on both sides.

We lie entirely at the mercy of attornies, — more fell than sharks ; and their costs, however exorbitant, must be paid, to avoid further expence.

An attorney lately sent in a bill of costs, to the amount of one hundred pounds — and, upon a serious remonstrance, which alarmed some other principle about him than his conscience, was glad to take fifteen pounds, rather than to have his consummate knavery exposed.

A poor man, with ingenuity enough to entitle him to bread for himself, his wife, and a large family,

family, in any country save his own; brought me, not long since, the sentence of his banishment — summed up in an attorney's bill of costs.

The original debt was somewhat above fifty shillings, for a few months schooling for two of his children: but the attorney had swelled the reckoning pretty handsomely; and, before the poor debtor was aware, he had between thirteen and fourteen pounds to pay; for which he confessed a judgment upon his empty counter, shelves, &c. — but was obliged to fly for it.

But the schoolmaster must pay the attorney; otherwise his desks and forms will go to pot next — for it is an incontrovertible maxim in law, *That the law must never suffer any loss.*

How absurd to suppose, that a poor man who cannot pay a just debt of fifty shillings, can raise five times as much, to feed a rapacious attorney.

A poor man is frequently ruined, in due course of law, without knowing any thing of the matter — The cause, as the attornies call it, goes on — “*Curat lex*”, says *Ignoramus*. — The mill, when once set a-going, never stands still: — Term succeeds term — *a termino ad terminum* — which alone is sufficient authority for attornies to add costs to costs, and distress to distress; which finally end in execution and imprisonment.

For one cause that is brought to a hearing, hundreds are settled, by paying enormous costs to attornies, on both sides.

Englishmen, for the most part, even upon the justest grounds, dread the law ; its certain ruinous expence—its doubtful determination :—and that which ought to be considered as their greatest security, their best privilege, is become their greatest terror ! so that few have courage to cry out with PAUL, “ *I appeal to CÆSAR !* ”

This general weakness, upon too good a foundation, attornies are well aware of, and improve to their own emolument.

Several country attornies are the terror of all around them !—They are feared as men fear vipers and scorpions—from the power which is in them of doing mischief !

By the statute, 4. Hen. IV. Chap. 18. it is enacted, That attornies should be examined *by the judges* ; and none admitted but such as were virtuous, learned, and sworn to do their duty.—Do they at this time undergo an examination *by the judges themselves* ? — and are none admitted and sworn to do their duty, but men of *virtue and learning* ?

By the same statute, attornies appear to have been, formerly, no more than the *servants* of their clients — They are now become their *masters*, with a vengeance !

The wisdom of legislature has provided, in some measure, against the exactions of attornies, by subjecting their costs to be taxed :—an argument, that no set of men is so apt to impose, so liable to over-reach, so little to be confided in—a stigma

stigma, if rightly considered, upon the whole body.

Yet, even with all this precaution, we find many *items* are allowed from use, more than from strict propriety : and should some few only be lowered, or taken off ; what satisfaction arises to the wronged client ?—Simply that of taking it from one lawyer, and giving to another.

Attornies costs, upon taxation, have been frequently reduced one fourth, one third, one half, two thirds, and even three fourths !—and yet such infamous men-eaters have been suffered to continue their villanous practice ; instead of being suspended, or totally disqualified from acting ever after.

Such horrible depredations, as are known to be in common practice among attornies and sollicitors, even of the first eminence, are hardly to be imagined !—for otherwise, how are we to account for the style in which many of them live, and the immense fortunes they amass, often—from nothing ?

An attorney is justified in making a charge for drawing his bill of costs and receiving payment !—what man, of any other profession, ever dreamt of setting a price for writing out his own bill, and receiving his money ?

But not only for *writing*, but even for *reading* his *own* bill to his client, he is allowed, it seems, to make a charge—For a certain respectable gentleman, in a neighbouring county, not being able, from the quaintness of the law-hand, and the jargon

gon of the contents, to read his attorney's bill, sent for the man to come over and read it to him; which he did—and added *one pound one* to his former charge! “Are you serious?” said the gentleman: “and will you take it?”—“I am very ‘serious,’ reply’d the attorney, ‘and will most certainly take it—I am not to take my horse, and ‘come here for nothing’—“Then, there’s your ‘money,” said the gentleman (paying him his account, with the extra-guinea)—“but remember, ‘I shall hang up this extraordinary bill of costs ‘in my hall, for every visitor to peruse!’—“You may hang it wherever you please,” said the *modest* attorney—and the bill was hung up accordingly; and is to be seen to this day.

This is a notorious fact; and I have no doubt but that several of my readers can vouch for the truth of it.

People, unhappily, immersed in law (even men of understanding in other respects) are commonly so infatuated, as to believe, the right or the wrong, the strength or the weakness of their cause, depends almost entirely upon the diligence and cunning of their attorney or solicitor.

“I think after the cause I gained in B. R. last ‘*Michaelmas* term,” says one, “no adventurer ‘need despair.”—“But what say you to mine in ‘C. B. in *Hilary*?’ says another—“There was desperate work for you!”—“If it had not been for ‘me,” says a third, “it would have been all ‘over with poor Dick * * *.”—“Well, I know ‘not how it is,” says a fourth, ‘but, by G—d! ‘I never lost a cause in my life!’ “‘Tis management,

"ment, gentlemen, believe me — all depends upon management."

This is the common cant—the quack language of the profession; and innumerable advantages result to them from such saucy pretensions, and the jejune conclusions of their intimidated clients,

For thereby attornies of taste, or of no taste—of real knowledge, or of immense vanity; have the finest opportunity of forming or enriching their libraries and cabinets, by little and little, with the choicest morsels; and of furnishing their houses with pictures, drawings, &c. at the cheapest rates — more especially in cases of distress and death, and where suits are pending. *

English attornies, more frontless than *Spanish* beggars, ask in a tone not to be easily withstood; and demand in such sort, as implies it may be dangerous to refuse,

* Several years ago, a gentleman of my particular acquaintance, who had the management of a very large property, for the benefit of a family who had newly lost its head — (the daughter of whom, I may truly say, was one of the richest heiresses in this kingdom) — applied to me in the way of my business, at that time, to come to the villa of the deceased, a short distance from *London*, to examine and set a price upon a choice and elegant Study of Books, and some Portfolios of valuable Prints. My direction was, "Not to overstrain in point of value, nor to exceed the price that any bookseller would give for them." — I thought the caution singular; and, as the gentleman was my familiar, naturally enquired how they were to be disposed of? — "To tell you the truth," replied my friend, "*our Solicitor in Chancery* has taken a *prodigious liking* to them; and we must not *disoblige* him—for, you know what suits we have pending in that court."

Upon

Upon almost every demise, the best heriot commonly falls to the attorney.

Whether we live or die, the attorney is sure to be a gainer.

If any charge of malpractice lay against an attorney, such matter should be cleared up before he was suffered to act any further.

In a concern of so sacred a nature as the law of the land, every unworthy practitioner, bringing a dishonour upon that profession of which he is a minister, should be detected and brought to infamy and condign punishment, in a summary way.

This exactly corresponds with the statute 4. Hen. IV. ch. 18. already referred to, and which is inserted below at full length. *

Statutes

* "*Item*, For sondry damages and mischives, that have
 " come before this time, to divers people of the realme, by
 " the greate nombre of attourneis, ignoraunt and not learned
 " in the lawe, as they wer wont to be before this time: it
 " is ordeined and stablished, that all the attourneis shalbee ex-
 " amined by the justices, and by their discrecions, their names
 " to be put in rolle, and they that be good, and vertuous, and
 " of goodfame, shalbe received and sworne welle and truely to
 " serve in their offices, and especially that they make no suite
 " in a foreine countrey. And the other attourneis shalbee putte
 " oute, by the discrecion of the sayed justices, and that theyr
 " *maisters*, for whom they were attourneis, bee warned to
 " take others in their places, so that in the meane time, no
 " damage nor prejudice come to theyr sayed *maisters*. And
 " yf any of the sayed attourneis do dye or cease, the justices
 " for the time beyng, by their discrecion shall make on other
 " in his place, whyche is a vertuous man and learned, and
 " sworne in the same maner as afore is sayd. And if any
 " suche attourney be hereafter notoriously found in any de-
 " faute,

Statutes at that time, and long after, were concise; and so intelligible, as hardly to be mistaken.

From several late detections we have had of the most horrible enormities, committed by sundry profligate and perjured men, calling themselves attorneys; we are led to fear the said statute is too much dispensed with, or negligently observed.

When bad men fall out among themselves, some good commonly arises to the community.

An attorney, now in *Newgate*, upon a sentence of the court of *King's Bench*, having, it seems, quarrelled with some of his *quondam* cronies of the same profession with himself; has lately threatened to expose their manifold *perjuries* and *felonies*; and promises to treat the public "with a
 " *Luxurious Banquet* of ingenious Villany—to
 " exhibit a scene of *Fraud, Forgery, Perjury*, and
 " *Subornation of Perjury*, unparalleled in the history of Human Corruption!"—And that no species of atrocity may be wanting to complete the horrid catalogue, he charges one of his said friends "with *Plans of Poisoning and Assassinations*!" †

"faute of recorde or otherwise, he shall forswear the court,
 "and never after be receyved to make any suite in any court
 "of the Kynge. And that this ordinaunce be holden in the
 "Eschequer after the discrecion of the treasurer, and of the
 "barons there."—See *Berthelet's* Edition of the Statutes,
imprinted 1543.

† The printed paper referred to, is written from *Newgate*, and signed, ROBERT HOLLOWAY.

Who

Who would believe, upon any authority but their own, that we have such demi-devils among us, acting as attorneys?

He concludes his paper in the following emphatic words—which, I think, cannot be read without regretting, that one who writes so well, can act so ill.

“These are the authorities, upon which the irritated historian shall awaken the indignation of posterity, with the disgraceful tale, That towards the close of the xviiith century, there existed in the metropolis of *Great Britain* two abominable miscreants”—(would to Heaven there were only two!)—“whose rapacity was so unbounded, whose perfidy was so enormous, whose perjuries were so invincible, and whose corruption was so contagious, that the laws of the land shrunk from the task of punishment; public justice stood appalled at their guilt, and silently beheld whole families perish in the vortex of their wickedness!”

Every attorney should be obliged to act, in all causes in which he was interested, in his own name, or not at all. †

The contrary practice leaves an opening for duplicity and deceit; the pernicious consequences

† It is no uncommon case among prisoners for debt, when their actions become supersedeable, not to be able to find the nominal attorneys in the causes. There are instances of that sort in the *King's Bench Prison* at this time. If such proceedings are suffered, any man may be imprisoned—no man is safe in his person.

whereof

whereof are not easily foreseen—and from which the majesty of the law, of a divine nature, tho' of human institution, should be free from the smallest suspicion.

Pettifoggers, the greatest pests of this nation, would be no longer able to claim the sanction of a court of justice, as a cloke for their abominable knaveries—but would be constrained to find out other employments—such as turning informers, setters, swindlers, false indorsers, sham-bail, and such like callings, suitable to their genius and practice:—while men of honour of the profession would be distinguished, respected, esteemed,—as they deserve to be.

SECTION XVIII.

Touching Criminal Law.

I Could wish to see the laws of my country, more especially those that respect ordinary trespasses, as clear and intelligible as the ten commandments—And that,

Every law was distinct and simple in itself—not blended with others; and summed up in the fewest and plainest words imaginable.

In

In matters of offence, such as occur most frequently, it would not be amiss to annex, under each law, the short reason thereof; as well to enlighten and establish the innocent, as, in some measure, to awaken and deter the guilty.

Our great *Coke* (for he merits no less an epithet) has set an example of this sort:—but that which is offered for general instruction, should be concise; and what is meant to be popular, cannot be too plain.

“The commandment is a *lamp*,” says the wise man, “and the LAW is LIGHT itself—*Lex est Lux*.”

And the royal psalmist, exults to the same purpose—“Thy WORD (*i. e.* the Law) is a *lamp* unto my feet, and a *light* unto my path.”

No delinquent ought to profit by the error of an indictment—that can only reflect upon the insufficiency or venality of some particular officer; but can in nowise affect or cancel the criminality in question.

But errors of that sort would seldom happen, were the laws concise, clear, and explicit; instead of being verbose, vague, and evasive.

Punishments should bear, as near as possible, a just proportion to crimes:—There is a measure of offence, and there ought also to be a measure of punishment.

Capital

Capital punishments are too frequent among us—and we find, by experience, they rather increase than lessen the number of offenders. †

Besides, they are disproportioned—without rule or measure.

We hang pickpockets—and suffer, at all times, the robbers of the public to rule over us.

Forgery has increased considerably of late years, since forgery was made capital—it is now become one of the most common crimes among us.

Hanging then, 'tis plain, is no cure for forgery, save in the person of the offender.

It puts an end to some wretched beings; but it deters not others from committing the like offence.

A punishment more terrific, if possible, and yet to spare the life, might, perhaps, prove more effectual—To strike off the false hand of the offender, and set him free—to linger out a life of shame and infamy.

I am aware that a strong objection lies against mutilation—though much in use in our old law :—for such as, from misfortune, or in the service of their country, had suffered a like deprivation, might be obnoxious to the taunts of the vulgar; and be suspected, by the misjudging, of having been guilty of a crime, among the most detestable, in the eyes of all honest men.

† “ We have found, by woful experience,” says *Coke*, “ that it is not frequent and often punishment that doth prevent like offences.”

G

But

But the nature of the punishment would, probably, lessen the number of offenders in that particular; and the living examples deter more than the dead ones; who are, commonly, no sooner executed than forgotten. — To change the nature of the punishment, in many cases, so as to spare the life, might, possibly, work some good effect — at least, 'tis worth an experiment.

Severe scourging, and still severer branding upon the shoulder with a red hot iron, together with imprisonment (not without employment for their necessary sustenance) are in great use in most parts of the continent of Europe; where felons are rarely brought to the last extremity of the sword and the halter. 'Tis true, gallowses are standing in every district; but, in many places where I have been, upon inquiry, no execution had been done upon them within the memory of man.

The punishment of scourging, branding, and imprisonment, frequently effect reformation in the delinquents, and procures them an earlier discharge from their confinement than their sentence led them to hope. But should any, unhappily, return to their old courses, and be taken up upon suspicion, the first ceremony is to strip the party; and if the indelible stigma is found upon his back, it shews he has not always been innocent; and often leads to a detection of fresh guilt.

The practice is general in *Germany* and the *North*; and banished vagrants who bear the brand about them, are the more cautious how they get themselves into scrapes.

The punishment of a month's imprisonment, with only bread and water, is wonderfully efficacious when strictly observed. — I remember once
having

having had a dispute with a Dutch magistrate on this head. — “In England,” said he, “you have not the simple punishment of bread and water.” — I assured him we had; that it was the sentence of the law in many cases, both in letter and spirit; and that our houses of correction afforded no other support.

“I shall not arraign the wisdom of your criminal law,” reply’d the magistrate; “but there is certainly a great defect in the executive part: a prison-house, in this country, has a very different aspect to one in yours: with us, all is cleanliness and quiet; with you, all is filthiness and noise: criminals are suffered to run riot, and drink, and dance in fetters. Our punishments tend to reformation, and frequently effect it; yours, it is feared, excite to further and still further delinquency; till at length the halter must end, where the magistrate might have amended, and what the police ought to have prevented.”

If it is a melancholy truth, which no one can deny, that more criminals suffer death in *England* than in any other country of Europe; or, perhaps, than in all Europe put together; it follows, either that the people are more abandoned, which is really not the case, or the laws more sanguinary, and less reformatory than they ought to be.

“Justice,” says *Coke*, “is twofold; severely punishing, and truly” (I had rather he had said, wisely) “preventing. *Iustitia est duplex; severè puniens, et verè (magis prudenter) præveniens.*” — O, for the love of humanity, and the honour of the *British* name, let our rulers, like able state-physicians, ever prefer preventive to executive justice!

Well-regulated workhouses and houses of correction, were sufficient punishment for many and early crimes—from the neglect of which, we hang in cart-loads, and transport in ship-loads!

Juries, I observe in criminal causes, have fallen into a dangerous practice, more of late years than ever—it is high time they should be warned of it.

I mean of bringing in a verdict contrary to the tenor of a positive oath—which is to find the culprit guilty or not guilty of the indictment.

It is not in the power, tho' it may be in the breast of jurors, however sanguinary the law, to mitigate the punishment, no more than they can change or qualify the nature of their oath—they cannot extend mercy; they can only recommend it.

A piece of plate, or a watch of the value of five pounds, or forty shillings, can never be reduced to ten pence, by twelve conscientious men, who reflect that they have just called upon God, in the most solemn manner, to witness for the purity and truth of their verdict.

This is to make themselves judges of the punishment, a point already settled, as well as of the offence.

Such inconsiderate jurors are styled *merciful* juries, which is an improper epithet—they should be, in every sense of the word, *just* juries.

Yet, according to the present disproportion of crimes and punishments among us, this human error (in itself no less than a species of perjury) is to be winked at.

SECTION

SECTION XIX.

A Revival and Abridgment of the Law further insisted upon—nowise impracticable—nor difficult, if once fairly set about.—The Example of JUSTINIAN quoted.—Proposed, at different Periods, to be effected in this Country.—Lawyers commonly averse to Reformation of Abuses in the Law, and Abridgment in Practice.—The Law of the Land, no less than the established Religion, ought to be maintained at the Public Expence.—The Mode to accomplish it obvious, easy, and without burdening the Subject.—SHEPPARD's England's Balme commended and recommended to the Consideration of the People, and their Representatives.

ALMOST every political evil complained of, may be remedied by a judicious revival and abridgment of the law; and a prudent choice of men,

“Give us good men!” says Harrington. By which, no doubt, the legislator would be understood, men who prefer the public to their own private interest. Then we shall be sure to find out where the deficiency lies. “Evil,” says Coke, “hath not an *efficient*, but a *deficient cause*. *Malum non habet efficientem, sed deficientem causam.*”

To effect this great purpose, I apprehend, is in nowise impracticable; nor even difficult (unless the lawyers set their faces against it) if once begun in earnest.

What an example have we upon record, of a far more arduous task performed in the sixth century?—Undertaken by command of the great Jus-

TINIAN; and executed by TRIBONIAN and his sixteen coadjutors, within the short space of three years; * namely the Roman Digests, or Pandects, compiled from an infinity of books (upwards of two thousand) the labours of the wisest and most learned juriconsults, during a term of 600 years.

A revival and abridgment of the common law has been often wished for and proposed, though hitherto never brought to any effect—by Sir Thomas More, in the reign of HEN. VIII. and by Bacon, in the reigns of ELIZ. and JAMES. Coke seems to indicate the necessity of it, where he admits the property of human law to be ever changing; and that “human laws are born, and live, and die.” “*Humani juris conditio semper in infinitum decurrit, et nihil est in eo quod perpetuo stare possit: leges humanae nascuntur, vivunt, et moriuntur.*”

But then the difficulty (for lawyers will always raise difficulties) of applying a remedy, according to the same learned judge. “*Leges figendi et refigendi consuetudo periculosissima est.*” “The custom of establishing and abrogating laws is most dangerous.”

Why then establish them at all, but for a season; and renewable or alterable as time shall evince their fitness?

During the *inter-regnum* much was done, and far more chalked out, and intended to be done towards rendering the common law more concise and intelligible.

* This great work was begun anno 530, and finished 26th December, 533.

But

But there still remains enough for the present age to promote and to finish; so that at last we may truly say with Coke, not equivocally, "*Lex Angliæ non patitur absurdum*." The law of England cannot endure an absurdity"—What pity then that the practice admits of so many!—For,

In the course of the year, full as great number find their account in the chicanery and evasions of the law ('*apices juris*,' as Coke calls them; i. e. quiddits and quilllets) as in the equitable determination thereof.

The law is so far a lottery, that any man who gains his suit, or escapes the punishment that awaited his guilt, is said to have had good luck.

For the odds at starting are seldom more than a blank and a half, or two blanks to a prize in a lottery.

Yet so jealous are we of our laws, upon a strange supposition, that our liberties hang upon each letter; that we chuse to preserve them (even such as are manifestly defective and oppressive) in the same state, rather than to set about amending and abridging them—"For to amend and abridge," say the lawyers, "is dangerous work."

This is their constant doctrine—and who such good judges of what is best—for *themselves*?

"We have not half words enough," say they, "as it is—so that we are obliged to run over and over the same again and again—What does the blockhead mean by abridging?"

"Besides, shall we take upon us to new-frame and new-model, after our GIANT COKE, our

“ Common-Law TRIBONIAN !—who has adjusted
 “ almost every thing, above a century and a half
 “ ago?

“ Shall we be guilty of the horrible sin of in-
 “ novation * ? and thereby incur the dreadful
 “ penalty (Heaven forgive us !) of damnation ?—

“ Such pigmies in law as we are !—now, when
 “ half the gowns in *Westminster hall* were hardly
 “ sufficient to cover his Lordship’s cowl.”

This sounds more like rattling, than reasoning, the common upshot of mercenary lawyers argument—and (to pass over the affront to the present generation of upright juriconsults and virtuous legislators of our own country) is absolute slander against the great *Coke* ; who was a professed admirer of brevity in law-proceedings ; in several places recommends it ; and (as if he was treating of a lost art) wonders how we should have forgot it. — A matter, indeed, of just wonder to every reasonable man !

“ How silly,” says he, “ to use many words,
 “ when few will serve ! *Frustra fit per plura quod*
 “ *fieri potest per pauciora.*”

Again, He makes it the test of the *simplicity* and *fair faith* of former times, that they established all things in a few lines. “ *Hæc fuit illius candida*

* Lord Bacon appears to be of a contrary judgment to this common lawyer. “ Surely every medicine” says his Lordship, “ is an *innovation*, and he that will not apply new remedies, must expect new evils ; for time is the greatest *innovator* ; and if time of course alters things to the worse, and wisdom and council may not alter them to the better, what must be the end ?”

“ *atatis*

*" ætatis fides et simplicitas, quæ pauculus lineis
 " omnia fidei firmamenta posuerunt."*

It appears to be highly just and reasonable, that the public law and public justice of a free people, no less than the established religion, should be maintained by the public at large §.—In which case, we should have no more ministers of the law than were found to be necessary :—And not, as it frequently happens, by the most embarrassed, necessitous, friendless, and poorest of the people.

How scandalous, in every law-office, to find that such fees must be paid ! — and to read in every petty court and justice-shop, enormous tables of fees ; without which no business can be done—no justice can be had !

Justice, by this means, is set to sale † ; and is become a common stall, a public market.

The expence would be a trifle to the people at large, in comparison with the sums now ex-

§ It was proposed by WILLIAM SHEPPARD, an eminent lawyer, about the middle of the last century,

" That all sheriffs, attornies, and other officers of the great courts be paid by the state, and have pay according to their abilities, as the judges are paid ; and receive no fees of any man for any thing in any of these courts. — That all the officers of all the courts, be as few as may be : and that they come freely to their offices, and be not put to buy them—That no judge, or any of his servants, have any fees of the people ; or the disposal of any office, or profit out of it, in his own court."

See his *England's Balme*, 12^o Lond. printed an. 1657, p. 22. This little work, of great merit, I look upon as a sketch for a general reformation of abuses at common law ; wherein almost every grievance is pointed out, and its remedy proposed ; well worthy the consideration of the people and their representatives ; more especially at this time.

† " There is nothing more abhorrent," says the virtuous Emperor ALEXANDER SEVERUS, " than the selling of justice."

pended :

pended :—less than the twentieth part of what is *now* squeezed from the pockets of distressed individuals, would be more than sufficient.

The means to obtain this desired end, are simple and obvious, as is the good they promise to effect ; without any further taxes, or burdening the subject. †

There is nothing chimerical or new in the proposal, neither is it mine—and far be it from me to arrogate to myself that praise which is justly due to another—though it would be no difficult matter, in such a case, to plead prescription,

SECTION XX.

Knowledge of the Law an essential Part of Education, as well of Infants as of Adults. — Law-Catechisms proposed. — Portions of the Law, not improper to be read in Churches, in lieu of Chapters from LEVITICUS and DEUTERONOMY.

THE knowledge of the law, so far from being a mysterious craft, we find, has some times made a part of infant-education :—children were taught it, as, with us, they are taught the Catechism.—And, surely, much less in quantity would be sufficient, and far easier to be remembered, than either the Catechism of the Council of Trent, of Heidelberg, or of the Assembly of Divines.

And this suggests to me an idea of the usefulness of *Law-Catechisms* ; of which there might be

† *Sheppard*, with great good sense, proposes the establishing of county treasuries ; into which all penalties and forfeitures upon the penal laws should be paid.

two sorts; a shorter and a longer:—the one, easy and concise, suited to the capacity of infants; the other, fuller and more diffuse, for the instruction of adults.

The *Cretan* children, *Ælian* informs us, were obliged to learn the laws of their country †; so that the most essential knowledge of a citizen grew up with them; and, being early imprinted, could never after be effaced.

We read, that the laws of *Charondas* were used to be sung at *Athens*:—The men were accustomed to sing them, according to *Aristotle*, that they might not forget them.—The same was practised by the *Agathyrsi*, and other antient people.

What stronger argument can be brought in favour of the paucity, and conciseness; the public utility and influence of laws, than that they were generally taught, and easily remembered?

But what memory could contain the endless letter of the Common Law?—What wisdom determine upon its points?—What cunning combat its subtilties?—What patience endure its delay?—What fortune support its rapacity?—What honest tongue defend the manifold abuses to which it is liable?

“The best rule,” says *Harrington*, “as to your laws in general is, that they be few.—ROME, by the testimony of *Cicero*, was best governed under those of the twelve tables:”—which tables were once considered as the fountain of all law. “They are a compend,” says *Cicero* †, “of all that is excellent in the books of the philosophers.”

† *V. Var. Hist.* l. 2. c. 39.

‡ *De Oratore*.

Again,

Again, many laws imply many mischiefs; and the more verbose they are, the more vexatious; so that the laws themselves, according to JUSTINIAN and the best lawyers, become as litigious as the suitors.—It must be a cumbrous charge of duties, that a man cannot carry about him in memory and in book!

After all the arguments that can be offered upon the subject of laws, there can be no doubt but that, sooner or later, they will be resolved into this short question—Which is of most importance to the community; the grandeur of the law, and the affluence of its ministers; or the liberty and happiness of the people at large?

If such a concise code † as I contend for could be had, it could not fail of producing the most salutary effects.

I see no impropriety there would be in the minister's reading some portion thereof to the congregation, every Sunday, immediately after Morning Prayer.—I apprehend, it would be full as useful, and promises to be much more so, than certain chapters of *Leviticus* and *Deuteronomy*, appointed for first lessons.

The lawyers will, probably, deride a proposal, neither fantastical nor new:—and, it may be, some of the clergy will join in the laugh.—But, in the face of both, will I maintain, That nothing can be more rational, nor more likely to be produc-

† It could not, consistent with the nature of the *British* constitution, be called The GEORGIAN CODE—however fervently it might be wished, That so much good to the people, and so much glory to the sovereign, might grace the annals of one of the most virtuous princes that ever filled the British Throne.

tive

tive of Public Peace and good order, than that a necessary and essential part of the law of the country, should make a part of the religion of the country, and be sanctified as such.

The reading of the law in the temple of the Lord, is of high antiquity. The People of God, as they are pre-eminently styled, have preserved that practice from the days of Moses, and will continue the same, in all probability, to the end of the world.

Neither is the usage altogether unknown in this country—for MAGNA CHARTA, *formerly*, was not only appointed to be read, four times a year, in full county-assemblies; but also, twice a year, in full congregations of the people, in their several parish churches:—and the statute against profane cursing and swearing is, at this time, publicly read in churches four times a year.

Let no man take offence at these reflections; as the writer hereby declares, that no offence is meant to any individual:—They are, as far as he is capable of judging, founded in truth, and upon just and general principles of benevolence—with a view to promote public good, and the peace and prosperity of all, either in the present or the rising generation.—As such, it is hoped, they will have the suffrage of the READER, and merit the attention of the GREAT, and the approbation of the GOOD.

CONCLUSION.

Queries from the foregoing Premises.

THESE speculations, if approved, will be enlarged, from time to time; and every species of abuse in the ruinous practice of COMMON

LAW

LAW and EQUITY, be faithfully collected, stated, and laid before the public.

As matter encreases (for grievances of every kind, arising from infamous practice, if well authenticated, will be attended to) the whole shall be made over to an open committee of gentlemen, distinguished for their learning, integrity, and independency; well versed in history, antiquities, and jurisprudence; particularly in those of our own country, and of the law of nations — well studied in the antient *Gothic, Saxon, Danish, and Norman* laws (from whence we principally derive the elements of our common law) and in all the different codes of *Europe*.—From the candid and ingenuous inquiries of such a committee, it will be resolved,

1. Whether a revision and abridgment of the common law are not much wanted, and devoutly to be wished?

2. Whether the grandeur and influence of common law, in the persons of professional lawyers, have not *encreased*, far beyond their original and constitutional standard—whether they are not *still encreasing*—and whether they ought not to be *diminished*?

3. Whether the two great pronouns *MEUM* and *TUUM*, as Sir *Edward Coke* calls them, may not be maintained at a far less expence; with more honour to the nation, and comfort to individuals, than by the present practice?

4. Whether it is not repugnant to common sense, and destructive of the rights of a free people, that the common law of the land, and the administration of justice should be a trade, in its
practice

practice the most scandalous, oppressive, and lucrative of all professions? *

5. Whether buying and selling law-offices and appointments, may not be deemed **POLITICAL SIMONY**?

6. Whether *finecure* places in common law and chancery-offices, are *reconcilable* to common sense?

7. Whether seals and writs, more especially the writs of *Habeas Corpus*, and *Superfedeas*, were not formerly free gifts †? whether they ought not to be so still?—And if so, how absurd to impose a grievous tax upon the course of justice, by endless stamps?

8. Whether common law, considered in its principles as the great bulwark, may not, in several points alluded to in the foregoing sections, be reckoned the great bane of the nation?

9. Whether a far greater number are not injured than benefitted by the present practice?

* The practice of the law, and the administration of justice, in every commonwealth, cannot fail, in its essence, to be of the most honourable and distinguished rank: and is not that sole consideration sufficient to warm and animate the enlightened mind to noblest emulation? But it is the grossest solecism, no less in politics than in ethics, even to suppose it can ever be, of all professions, the most lucrative, save in a corrupt state.

† What a reflection upon law-practice, to find that we have writs for the benefit of the subject at large, by which the poor and friendless cannot be benefitted—the cost is so great!

That some miserable debtors are left to languish in wretched county gaols, altho' the *Habeas Corpus* is held out for their assuagement; yet they cannot reach it!—It flies from them like the food of *Tantalus*.

The writ of *Superfedeas* is also expensive to those whom the lawyers have left nothing—save their skins.

10. Whether a very considerable part of the dearly-earned property of individuals, acquired by diligence, industry, ingenuity in various arts and manufactures, and other laudable means of living, is not wasted among lawyers, expended in law-offices, and, for the most part, divided among attornies?

11. Whether exactions, under colour of justice (for such are all enormous fees and ruinous costs) may not be accounted manifest injustice?

12. Whether *Salus Populi*, the *Suprema Lex* and *Summum Bonum* of a free people, is not abandoned, both in letter and spirit, where abusive practice in the administration of the law is generally known; and, instead of being studiously detected, and corrected, is overlooked, or connived at?

13. Whether abusive practice in the law, is not the greatest and most dangerous of all abuses?

14. Whether abuse, under colour of law, warranted by long pernicious practice, and winked at by those alone who have the power of redressing the people's grievances, is not the worst tyranny in the world?

15. Whether any known law in *Europe*, is, in its practice, so grievous, so expensive, so destructive, and so much abused as the common law of *England*?

16. Whether feuds and dissensions, and even frivolous misunderstandings among relations, friends, and neighbours, are not frequently fomented, aggravated, and brought to serious, expensive, and often destructive issues, to one or both

both parties, by the machinations of attornies, to their great emolument? †

17. Whether a board, or committee of healing and mitigation, between adverse parties, to be composed of neighbouring gentlemen, clergymen, sensible farmers and burghers, might not be appointed in every borough and market-town in the kingdom; a quorum of which might sit for an hour or two every market-day, and endeavour to reconcile and compose small differences and misunderstandings among neighbours; and thereby prevent vexatious and expensive suits at law: so that those who met in enmity, might often return to their homes in friendship; to the country's peace, the salvation of families, and utter disappointment of fleecing attornies?

18. Whether, when creditors are inclined to compromise with their debtors, their attornies do not frequently interfere, and defeat such humane intention, upon the meanest considerations, and the vilest principles; namely, to encrease costs.* —well knowing that if the insolvent debtor goes to gaol, the costs must fall upon the solvent client? §

19. Whether

† This class of law-ministers, the Rev. Dr. Fuller has dignified with the title of *Trumpeter-Barrator*. — “He falls in,” says he, “with all his neighbours that fall out; he posts to the houses of his neighbours, lest the sparks of their small discords should go out before he brings them fuel. — He loves not to have the bells rung in a peal, but rather to have them jangled backwards.” — See his *Profane State*.

* Dr. Fuller is remarkably humorous upon this kind of character. — “References and compositions,” says the ludicrous divine, “he hates, as bad as a hangman hates a pardon. — Had he been a scholar, he would have maintained all paradoxes: if a surgeon, he would never have cured a wound, but always kept it raw: — if a soldier, he would have been excellent at a siege; nothing but *ejército firma* would out him.” — See his *Profane State*.

§ Plaintiffs should attend to the secret dictates and workings of their own consciences and feelings, in preference to the

19. Whether prisons, on the debtor-side, owe not three fourths of their inhabitants to the rapacity of attornies, and sundry known abuses in the practice of the common law?

20. Whether nine out of ten, languishing in prisons, might not obtain their discharge, could they but raise the enormous costs brought upon their plaintiffs by their attornies?

21. Whether attornies costs do not frequently exceed the original debts? — in many instances, double—in some, treble—in others, four, five, six times as much?

22. Whether bankruptcies are not multiplied by means of the same order of law-ministers, and other notorious abuses in practice?

23. Whether double wages are not extorted by many attornies, for single work; and double costs upon single actions?

the sordid advice of unconscionable and unfeeling attornies; lest they incur a dreadful condemnation!—For, in our good old law, I find two species of *manslaughter* that bear hard upon hard-hearted creditors.

1. "He who denieth sustenance to a man."—Who can be said to do that so effectually, as he who depriveth the debtor of the means of sustaining himself?

2. "He who keepeth the body of a man in prison, *under colour of law*, till he dieth."—This, I think, needs no comment.—See *Horne's Mirror* (Manlaughter) p. 27.

To these may be applied the incomparable judgment of our great Coke, and let the attornies and underlings of the law, take it in what sense they please.—*Panis pauperum vel egentium, vita pauperum; et qui eos defraudet, vir sanguinis est!* "The bread of the poor and needy is their life; and he who beguileth them thereof, is a MAN OF BLOOD!"

24. Whether

24. Whether the rapacity of any set of men can equal the rapacity of a great number of English attornies ?

25. Whether such harpies deserve to be called men ? — or, if of human species, surely to be ranked in the lowest predicament.

26. Whether one professional lawyer in a score can, with a clear conscience, adopt for his motto, *Homo sum* ?

27. Whether the most extensive empire in Europe can poll half the number of attornies, and wretches calling themselves and acting as such ; and other meaner ministers of the law, as is to be found in the small district of South-Britain ?

28. Whether such men, and in such numbers as are to be found, acting as ministers and instruments at common law, would be suffered to live in any other country ?

29. Whether lawyers, more especially attornies, amass such immense fortunes in any country of Europe as in England ?

30. Whether mankind live not more at ease, in brotherly love and mutual exchange of good offices, where fewest lawyers are tolerated ?

31. Whether the *English*, by disposition, education, and good sense, are not as peaceable, as friendly, as liberal, as averse to contention *, and

† “Contentious suits,” says Lord Bacon, “ought to be spewed out as the surfeits of courts.”

as just in their dealings, without exception, as any nation in *Europe*; were it not that the practice of the common law affords so many openings to litigation; and that we abound with so many false guides, and false lights to mislead us?

32. Whether the labouring poor (the most useful part of the community) the improving mechanic, the necessary handicraft, the ingenious artist, the sober merchant and man of business, the cultivator and improver of the lands of the wealthy, the soldier of his country, and every other class of inhabitants (the lawyer only excepted) have not just cause to curse the abusive practice of the common law?

33. Whether the profession of law, as it is daily exercised, abounding with such consummate chicanery, exorbitant and dishonourable fees, ruinous costs, and other manifest hardships; and polluted by such a number of vile members and followers, till some reformation is effected, may be justly accounted the profession of a gentleman, or of an honest man?

34. Whether the evils afore-recited are not fairly stated—and, if just, whether they ought not to be considered as public abuse, and as so many infringements upon the rights of a free people?

35. Whether they call not aloud for redress?

36. Whether a general national outcry, in any period of history, antient or modern, of this or any other country, against abuses and for the redress of grievances, was ever so well founded, as
one

one against the intolerable hardships and encroachments, under colour of law, arising from practical abuse at common law?

37. Whether it is reasonable to suppose, that the lawyers themselves, considered as the most powerful and self-interested body in this nation, will, of *themselves*, ever effect, or even wish to effect, a thorough reform of the afore-recited abuses?

38. Whether Petitions and Remonstrances to the High Court of Parliament, ought not to be preferred against such glaring Abuses, and grievances of greatest magnitude; not only from counties, cities, and boroughs, but from every parish in the kingdom?

39. Whether it is not the duty of the people's representatives, immediately to enquire into, and set about correcting such enormities and infringements upon the rights of the people; in opposition to the united clamour that may be raised against it, by all the professional lawyers in the kingdom? *

Two most essential points have been gained, during the present reign, towards the people's

* As the Cry of the Clergy, *formerly*, upon every the least attempt to lessen, or to limit Church-Power, was, *The Church is in danger!* — so, no doubt, the general outcry among the lawyers, upon any just and constitutional ground for circumscribing their authority, abating their influence, and correcting abusive practice, will be, *The Constitution is in danger!*

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freedom

freedom—The Independency of the Judges; and the Security of our Houses from being attacked, and rifled by ministers of state, and their myrmidons.

For the first, we are indebted to the sheer bounty and princely benevolence of our most gracious Sovereign — whose name will be transmitted, with highest honour, to latest posterity, were it only for that transcendent free-gift to a free people.

The latter, we owe to the noble stand and manly opposition of an individual! — But,

“The greatest is behind!” †

which, how much soever it may be desired and thirsted after, can only be effected by the Wisdom and Authority of the GREAT COUNCIL OF THE NATION — to whose approbation or censure, I, once more, humbly beg leave to submit these imperfect, but well-intended Speculations; and, in conclusion, shall apply the words of our incomparable COKE ‡, on the subject of PREVENTIVE JUSTICE, to my present purpose:

“Blessed shall he be that layeth the first stone of
 “this building — more blessed that proceeds in it —
 “most of all that finisheth it, to the glory of God,
 “and the honour of our KING and NATION!”

† Shakespeare.

‡ See Epilogue to his Third Institute,

EPILOGUE.

EPILOGUE.

IN confirmation of what I have advanced, touching the increasing Grandeur and Influence of the Law; I have just learned (as far as newspaper report may be relied on) that, a few days ago, when an honourable Member of the House of Commons desired leave to bring in a Bill for the RELIEF OF DEBTORS, &c. *and correcting some enormous Abuse in the Practic Part of the Law, touching ARREST for DEBT*; which was seconded by an independent Baronet; — another honourable Member, a *Master in Chancery*, rose up, and questioned the honourable Mover, — “Whether the Bill proposed to be brought in, “had already *met with the approbation of certain* “LAW-LORDS?” or to that effect!!!

Was such a question ever before put in the CHAMBER of the PEOPLE’S REPRESENTATIVES?

As if it was absolutely necessary, *previously* to consult LAW-LORDS, whether abuses at COMMON LAW were proper to be restrained and corrected?

—*Risum teneatis, Amici?* †

Is it not as incongruous, as to suppose it necessary, *previously*, to advise with the BISHOPS, Whether it was proper to BRING IN a Bill for correcting *Church-Abuses*, and to recommend it to the people, in general, to go to Church?

But I forbear any further comment at present.

† Horat. in *Art. Poet.*

S. P.

F I N I S.

C O R R I G E N D A.

I am not quite clear, Whether Sir *George Jephries*, Bart. appointed Chief Justice of the court of King's Bench, 7. *Febr.* 1684-5, and made Lord Chancellor 28. *Sept.* following, was not created a Peer, even while Chief Justice—if so, he certainly was the first of either bench that was ever advanced to a Peerage.—*A worthy Precedent!*

I am also in some doubt, Whether Sir *Thomas Trevor*, one of the Twelve Peers created by Queen *Anne*, at one creation, in *Decem.* 1711. was not, at the same time, Chief Justice of the Common Pleas. Bishop *Burnet*, if I mistake not, is clear in both; but I have not the book *§* at hand.

Certain it is, that Sir *Charles Pratt* was created Baron *Camden*, an. 1765, while C. J. of the C. P. tho' he had not the Seals delivered to him till the year following.



§. Hist. of his Own Time.

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Shortly will be published,

By the AUTHOR of the foregoing SPECULATIONS,

L E T T E R S,

WRITTEN

From the Confines of the *King's Bench.*